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NORTH CAROLINA REGISTER

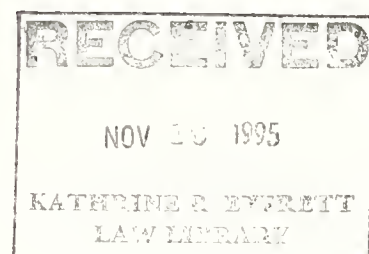
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November 15, 1995**

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PUBLISHED BY

***The Office of Administrative Hearings
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Raleigh, NC 27611-7447
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and ninety five dollars (\$195.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

NORTH CAROLINA REGISTER



Volume 10, Issue 16C
Pages 2027 - 2221

November 15, 1995

This issue contains documents officially
filed through October 31, 1995.

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|----------------------------|------------|------------------------|---|--|---|--|---|---|--|---|---|--|
| volume and issue number | issue date | last day for filing | end of com- ment period | earliest reg- ister issue for publica- tion of text | earliest date for public hearing | A. non-substantial economic impact | | | B. substantial economic impact | | | |
| | | | | | | end of re- quired com- ment period | deadline to submit to RRC for review at next RRC meeting | first legisla- tive day of the next regular ses- sion | end of re- quired com- ment period | deadline to submit to RRC for review at next RRC meeting | first legisla- tive day of the next regular ses- sion | |
| 10:17 | 12/01/95 | 11/07/95 | 01/30/96 | 02/01/96 | | | | | | | | |
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| 10:23 | 03/01/96 | 02/09/96 | 04/30/96 | 05/01/96 | 03/18/96 | 04/01/96 | 04/22/96 | 01/30/97 | 04/30/96 | 05/20/96 | 01/30/97 | |
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| 11:05 | 06/03/96 | 05/10/96 | 08/02/96 | 08/15/96 | 06/18/96 | 07/03/96 | 07/22/96 | 01/30/97 | 08/01/96 | 08/20/96 | 01/30/97 | |
| 11:06 | 06/14/96 | 05/23/96 | 08/13/96 | 08/15/96 | 07/01/96 | 07/15/96 | 07/22/96 | 01/30/97 | 08/13/96 | 08/20/96 | 01/30/97 | |
| 11:07 | 07/01/96 | 06/10/96 | 08/30/96 | 09/03/96 | 07/16/96 | 07/31/96 | 08/20/96 | 01/30/97 | 08/30/96 | 09/20/96 | 01/30/97 | |
| 11:08 | 07/15/96 | 06/21/96 | 09/13/96 | 09/16/96 | 07/30/96 | 08/14/96 | 08/20/96 | 01/30/97 | 09/13/96 | 09/20/96 | 01/30/97 | |
| 11:09 | 08/01/96 | 07/11/96 | 09/30/96 | 10/01/96 | 08/16/96 | 09/03/96 | 09/20/96 | 01/30/97 | 09/30/96 | 10/21/96 | 01/30/97 | |
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EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

| GENERAL | FILING DEADLINES | NOTICE OF RULE-MAKING PROCEEDINGS | NOTICE OF TEXT |
|---|---|--|---|
| <p>The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:</p> <ul style="list-style-type: none"> (1) temporary rules; (2) notices of rule-making proceedings; (3) text of proposed rules; (4) text of permanent rules approved by the Rules Review Commission; (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165; (6) Executive Orders of the Governor; (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; (8) orders of the Tax Review Board issued under G.S. 105-241.2; and (9) other information the Codifier of Rules determines to be helpful to the public. <p>COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.</p> | <p>ISSUE DATE: The Register is published on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p>LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p> | <p>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.</p> | <p>EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p>END OF REQUIRED COMMENT PERIOD</p> <p>(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</p> <p>(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</p> <p>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p> <p>FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.</p> |

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

**CHAPTER 1 - NORTH CAROLINA
ACUPUNCTURE LICENSING BOARD**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to adopt rules cited as 21 NCAC 1 .0702 - .0704, .0706 - .0707, .0710 - .0711.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on November 30, 1995 at the Management Concepts, Inc., 1418 Aversboro Road, Garner, NC.

Reason for Proposed Action: To adopt rules to establish administrative procedures.

Comment Procedures: Any person may submit comments to the Board for 30 days after the meeting or speak orally to a Board representative at the meeting.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

**SECTION .0700 - ADMINISTRATIVE
PROCEDURES**

.0701 RESERVED FOR FUTURE CODIFICATION

.0702 FILING COMPLAINTS

(a) General. Any person who has reason to believe that a licensed acupuncturist has violated the laws governing acupuncture may file a complaint with the North Carolina Acupuncture Licensing Board. Complaints shall be filed with the secretary of the North Carolina Acupuncture Licensing Board at PO Box 25171, Asheville, NC 28813.

(b) Form of Complaint. Complaints may be formal or informal, but must be in writing:

- (1) Informal Complaint. The Board shall consider any written communication, construed most favorably to the complainant, which appears to allege a violation of the laws governing acupuncture an informal complaint.
- (2) Formal Complaint. A complainant shall execute a formal complaint in writing under oath upon a form provided by the secretary. The complaint shall specify the statute or rule allegedly violated and shall contain a short statement of the acts or omissions constituting the alleged violation including the dates of said acts or omissions.

(c) Secretary's Response to Complaints. The secretary shall review any complaint to determine whether a major or minor violation has been alleged. If the secretary determines that the alleged violation is minor, he shall attempt to

resolve the complaint by informal communication with the complainant and the acupuncturist complained of. If the secretary determines that the alleged violation is major, he shall assist the complainant in filing a formal complaint, if one has not already been filed.

Statutory Authority G.S. 90-454.

**.0703 DETERMINATION OF PROBABLE
CAUSE**

(a) General. Formal complaints shall be investigated by the North Carolina Acupuncture Licensing Board. The Board shall hold a hearing to determine whether there is probable cause to believe a violation of the laws governing acupuncture has occurred.

(b) Notice of Hearing. The secretary shall provide notice of the probable cause hearing to the acupuncturist complained against by certified mail at least 15 days in advance of the hearing.

(c) Conduct of Probable Cause Hearing. The probable cause hearing shall be informal, and the secretary may establish at his discretion such procedures as are necessary to facilitate examination of the evidence. The Board may consider evidence at the probable cause hearing which would not be admissible if offered at the hearing in a contested case.

(d) Action by the Board. After examining the evidence presented at the probable cause hearing, the Board may dispose of each charge in the formal complaint as follows:

- (1) If no probable cause exists to believe that a violation of G.S. 90-456 has occurred, the charge may be dismissed.
- (2) If the respondent admits the charge, he may be directed to cease and desist from commission of those acts which violate the provisions of G.S. 90-456.
- (3) If a charge is denied and probable cause is found, or if a charge, while admitted, is of such gravity as to make the imposition of punitive sanctions appropriate, the complaint shall be presented to the Board of Examiners for its decision on the merits in accordance with G.S. 150B, Article 3A.

Statutory Authority G.S. 90-456.

.0704 INFORMAL PROCEEDINGS

(a) In addition to formal hearings pursuant to G.S. 90-456, the Board may conduct informal proceedings in order to settle on an informal basis matters of dispute. A person practicing acupuncture pursuant to a license or other authority granted by the Board may be invited to attend a meeting with the Board or a committee of the Board on an informal basis to discuss any matter the Board deems appropriate. No public record of such proceeding shall be made nor shall any individual be placed under oath to give

testimony. Matters discussed by a person appearing informally before the Board may, however, be used against such person in a formal hearing if a formal hearing is subsequently initiated.

(b) As a result of such informal meeting, the Board may recommend that certain actions be taken by such person, may offer such person the opportunity to enter into a consent order which will be a matter of public record, may institute a contested case concerning such person, or may take other action as the Board may deem appropriate in each case.

(c) Attendance at such an informal meeting is not required and is at the sole discretion of the person so invited. A person invited to attend an informal meeting may be entitled to have counsel present at such meeting.

Statutory Authority G.S. 150B-38(h).

.0705 RESERVED FOR FUTURE CODIFICATION

.0706 CONTINUANCES

Any person summoned to appear before the Board at a contested case hearing may seek to obtain a continuance of that hearing by filing with the Executive Secretary of the Board, as soon as the reason for continuance is known, a motion for continuance setting forth with specificity the reason the continuance is desired. Motions for continuances shall be ruled upon by the President and Executive Secretary of the Board or in the absence of the President, by the Secretary and Executive Secretary.

Statutory Authority G.S. 90-456; 150B-38(h).

.0707 DISQUALIFICATION FOR PERSONAL BIAS

Any person summoned to appear before the Board at a contested case hearing may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any member of the Board to hear and weigh evidence concerning that person. Challenges shall be stated by way of motion accompanied by affidavit setting forth with specificity the grounds for such challenge and shall be filed with the Executive Secretary of the Board on a timely basis. Nothing contained in this Rule shall prevent a person appearing before the Board at a contested case hearing from making timely personal inquiry of members of the Board as to their knowledge of and personal bias concerning that person's case.

Statutory Authority G.S. 90-456; 150B-38(h).

.0708 RESERVED FOR FUTURE CODIFICATION

.0709 RESERVED FOR FUTURE CODIFICATION

.0710 HEARING BEFORE REVOCATION OR SUSPENSION OF A LICENSE

Before the Board shall revoke, restrict or suspend any

license granted by it, the licensee shall be given a written notice indicating the general nature of the charges, accusation, or complaint made against him, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that such licensee will be given an opportunity to be heard concerning such charges or complaint at a time and place stated in such notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a hearing not less than 30 days from the date of the service of such notice upon such licensee, at which such licensee may appear personally and through counsel, may cross examine witnesses and present evidence in his own behalf.

Statutory Authority G.S. 90-454(1).

.0711 PROVISIONS FOR PETITION FOR A RULE CHANGE

Each person desiring to petition for the adoption, amendment or repeal of a rule shall submit the following information to the Board:

- (1) draft of the proposed rule or amendment to a rule;
- (2) reasons for the proposal;
- (3) effect of the existing rule;
- (4) data supporting the proposal;
- (5) effect on existing practices in the area involved, including costs;
- (6) names of those most likely to be affected, with addresses if known; and
- (7) the name and address of the petitioner.

The North Carolina Acupuncture Licensing Board shall render a decision regarding the denial of a petition or the initiation of rule-making proceedings.

Statutory Authority G.S. 90-454(8).

CHAPTER 4 - COMMISSION FOR AUCTIONEERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Auctioneers Commission intends to amend rules cited as 21 NCAC 4B .0103, .0201 - .0202, .0403, .0505, .0601 - .0602.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 3:00 p.m. on January 20, 1996 at the Pinehurst Resort & Country Club, Carolina Vista Drive, Pinehurst, NC.

Reason for Proposed Action: In addition to various technical changes, the Auctioneers Commission proposes this action in order to specify what it means to "conduct an auction." Also, this action will address the continued problem of misleading and untruthful advertising.

Comment Procedures: *Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from November 15, 1995 to January 20, 1996. Written comments not presented at hearing should be directed to Wayne Woodard. The proposed rules are available for public inspection and copies may be obtained at the Commission's offices at: 1313 Navaho Drive, Suite 201, Raleigh, NC 27609.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

SUBCHAPTER 4B - AUCTIONEER LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0103 DEFINITIONS

Whenever used in this Chapter:

- (1) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B;
- (2) "Auctioneering" or "conduct of auction" or "conduct of business" shall mean, in addition to the actual calling of bids, any of the following:
 - (a) contracting for an auction or auctions,
 - (b) accepting consignments of items for sale at auction,
 - (c) advertising an auction,
 - (d) offering items for sale at auction,
 - (e) accepting payment and disbursing monies for items sold at auction, or
 - (f) otherwise arranging, sponsoring, or managing an auction or auctions;
- (3) (2) "Board" shall mean the North Carolina Auctioneers Commission;
- (4) (3) "Minimum Bid" as used in auctions shall mean minimum opening bids.

Statutory Authority G.S. 85B-1; 85B-3(f).

SECTION .0200 - APPLICATION FOR LICENSE

.0201 APPLICATION FORMS

(a) Auctioneer. Each applicant for an auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one recent passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official in other states) in each county where the applicant has resided and maintained a business within the immediate

- preceding 60 months (five years);
- (3) the proper fees, as required by 21 NCAC 4B .0202;
- (4) documentation of required schooling or experience, as follows:
 - (A) Applicants who base their application upon their successful completion of an approved school of auctioneering must submit a photo-static copy of their diploma or certificate of successful completion. Applicants who base their application upon their successful completion of an approved school of auctioneering must have successfully completed this school within the previous five years, or if completed more than five years before, the applicant must submit documentation verifying the applicant's active lawful participation in auctions within the two years preceding the date of application.
 - (B) Applicants who base their application upon their successful completion of an apprenticeship must submit a log which was maintained and completed during the apprenticeship period which details the exact hours and dates on which they obtained apprenticeship experience, with each entry being verified and signed by their supervising auctioneer. A minimum of 100 hours of experience during the apprenticeship two-year period must be obtained. Not less than 25 of the total hours accumulated must be attributable to bid calling and not less than 50 hours must be attributable to working as a ~~ring man~~, ring person, drafting and negotiating contracts, appraising merchandise, advertising, clerking and cashiering, with not less than five hours of accumulated experience documented for each category. An apprentice who applies for an auctioneer license under this subsection must submit his application and supporting documentation and obtain a passing score on the auctioneer exam prior to the expiration of his apprentice auctioneer license.
- (5) Non-resident applicants must also submit a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.
 - (b) Non-Resident Reciprocal Auctioneer. Each non-resident applicant for auctioneer license, who applies for a North Carolina license pursuant to G.S. 85B-5 shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:
 - (1) one recent passport-type photograph for identification;
 - (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county

where the applicant has resided and maintained a business within the immediate preceding 60 months (five years):

- (3) the proper fees, as required by 21 NCAC 4B .0202;
- (4) a statement of good standing from the licensing board or Commission of each and every jurisdiction where the applicant holds an auctioneer, apprentice auctioneer or auction firm license; and
- (5) a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(c) **Apprentice Auctioneer.** Each applicant for an apprentice auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one recent passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the proper fees, as required by 21 NCAC 4B .0202;
- (4) the signature, as designated on the application form, of the licensed auctioneer who will be supervising the apprentice auctioneer;
- (5) a written statement of the proposed supervisor's background and experience in the auction profession to include the number and types of auctions conducted or participated in annually; and
- (6) if applicant is a non-resident, a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(d) **Auction Firms.** Each applicant for an auction firm license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where any principal and designated person of the auction firm has resided and maintained a business within the immediate preceding 60 months (five years);
- (2) the proper fees, as required by 21 NCAC 4B .0202;
- (3) a certified copy of any applicable Articles of Incorporation, Partnership Agreement, and Assumed Name Certificate;
- (4) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant firm and any principal and design-

nated person of such firm holds an auctioneer license of any type; and

- (5) if applicant firm is a non-resident, a properly completed "Designation of Agent for Service of Process Form" (one each for the auction firm and for each principal and designated person of the firm) with notarized signature and notarial seal affixed and, if a corporation, appropriate corporate seal and corporate secretary's signature affixed.

Statutory Authority G.S. 85B-3(f); 85B-4; 85B-4(d); 85B-5.

.0202 FILING AND FEES

(a) Properly completed applications must be filed (received, not postmarked) in the Board office on or before the filing ~~date~~ dates established by the Board ~~for a scheduled examination~~ and must be accompanied by all required documents.

(b) License fees are as follows:

- (1) New auctioneer license for an applicant who did not serve an apprenticeship \$125.00
This includes a \$75.00 annual license fee; \$25.00 application fee; and \$25.00 examination fee.
- (2) New auctioneer license for an apprentice auctioneer \$100.00
This includes a \$75.00 annual license fee; and \$25.00 examination fee.
- (3) Renewal of auctioneer license \$ 75.00
- (4) New apprentice auctioneer license \$ 50.00
This includes a \$25.00 license fee and a \$25.00 application fee.
- (5) Renewal of apprentice auctioneer license \$ 25.00
- (6) New auction firm license (no examination) \$100.00
This includes a \$75.00 annual license fee; and \$25.00 application fee.
- (7) New auction firm license (examination) \$125.00
This includes a \$75.00 annual license fee; \$25.00 application fee; and \$25.00 examination fee.
- (8) Renewal of an auction firm license \$ 75.00
- (9) Application and processing fee for conversion of non-resident reciprocal license to in-state license \$ 25.00
- (10) Reinstatement of lapsed license fee \$ 25.00

(c) Fees shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts are not accepted. However, personal checks may be accepted for payment of renewal fees.

Statutory Authority G.S. 85B-4.1; 85B-6.

SECTION .0400 - LICENSING

.0403 APPRENTICE AUCTIONEER LICENSE

(a) An apprentice auctioneer's license is valid only while he is associated with and supervised by a licensed auctioneer assigned by the Board. In order to be assigned by the Board as a supervisor, the Board must receive a written notice, signed by the prospective supervisor and the apprentice, requesting that the licensed auctioneer be assigned as a supervisor for the apprentice. Upon receipt of such a request, the Board shall evaluate the requested assignment and such requested assignment may be denied by the Board if the prospective supervisor fails to possess a minimum of five years of active experience in the auctioneering profession or an equivalent combination of training and experience or other good cause shown. Upon termination of the association between the supervisor and the apprentice, the supervisor shall immediately notify the Board in writing, showing the date and cause of termination.

(b) The supervising auctioneer must be on the premises of the sale location at any and all times that an apprentice auctioneer is engaged in bid calling. Additionally, the supervising auctioneer shall be responsible for supervising the apprentice on a regular basis and ensuring that the apprentice auctioneer conforms with the auctioneer law and Rules promulgated by the Board.

(c) Any licensed auctioneer who undertakes the sponsorship of an apprentice auctioneer shall ensure that the apprentice receives proper training, supervision, and guidance in the following:

- (1) A practical and working knowledge of the auction business including fundamentals of auctioneering, contract drafting, bid calling, basic mathematical computations, advertising, and settlement statements;
- (2) The provisions of the licensing law;
- (3) The Rules of the Board; and
- (4) The preparation and maintenance of written agreements, record books, and other sales records as required by law.

(d) Apprentices are prohibited from conducting or contracting to conduct any auction without the prior express written consent of the sponsor. No sponsor shall authorize an apprentice to conduct or contract to conduct an auction, to act as principal auctioneer or handle any funds related to an auction unless the sponsor has determined that the apprentice has received adequate training to do so. An apprentice auctioneer may work under only one licensed auctioneer at any given time.

(e) The sponsor shall be responsible for ensuring that the apprentice complies with all of the ~~laws~~, laws and Rules as they apply to any auction related transaction approved by the sponsor.

(f) An apprentice auctioneer is also required to notify the Board, in writing, immediately upon termination of his

association with his supervising auctioneer, at which time his license will be immediately held in an inactive status. If an apprentice auctioneer's supervising auctioneer's license has been suspended, revoked, or placed on probation the apprentice auctioneer's license will be immediately held in an inactive status. Once in an inactive status, an apprentice auctioneer shall not conduct or contract to conduct any auction. An apprentice auctioneer may only remain in this inactive status for a maximum of 90 days. If the apprentice auctioneer retains another sponsor approved by the Board within this 90 day period, the apprentice auctioneer's license will not be deemed to have lapsed under 21 NCAC 4B .0402(d).

Statutory Authority G.S. 85B-3(f); 85B-4.

SECTION .0500 - SCHOOLS OF AUCTIONEERING

.0505 GROUNDS FOR APPROVAL: SUSPENSION OR REVOCATION

(a) The approval of a school by the Board shall be valid for a period of two years. Each approved school shall be evaluated for reapproval prior to the expiration of the two year period.

(b) The Board may deny, suspend or revoke the approval of any school when it finds that the school has failed to meet or to continuously maintain any requirement, standard or procedure of this Section. ~~Section .0500~~. Additionally, the Board may deny, suspend or revoke the approval of any school upon a finding that any information required under this ~~Section .0500~~ was knowingly falsified or misrepresented.

Statutory Authority G.S. 85B-3(f); 85B-4(d).

SECTION .0600 - GENERAL AUCTIONEERING

.0601 CHANGE OF ADDRESS OR BUSINESS NAME OR OWNERSHIP

(a) All licensees shall notify the Board in writing of each change or addition of residence or business address (including mailing address) and change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions.

(b) In the case of a corporate licensee, said licensee shall immediately notify the Executive Director of any change in the directors or officers of the corporation and such new director(s) or officer(s) shall comply with the provisions of Subparagraphs (d)(1), (4) and (5) in Rule .0201 of this Subchapter. If the new directors or officers have a 51% or greater controlling interest in the corporation, the firm license shall be retired and the firm must apply for a new license.

(c) In the case of a partnership license, said licensee shall immediately notify the Executive Director of any change in partners and such new partners shall comply with the

provisions of Subparagraphs (d)(1), (4) and (5) in Rule .0201 of this Subchapter.

(d) In the case of an auction firm license, the licensee shall immediately notify the Executive Director of any change in designated person(s) and such designated persons shall comply with the provisions of Subparagraphs (d)(1), (4) and (5) in Rule .0201 of this Subchapter.

(e) Any change in address, business name or ownership required by these Rules must be reported within 10 days of the occurrence of such change.

Statutory Authority G.S. 85B-3(f).

.0602 ADVERTISING

(a) In all advertisements relating to an auction, the auctioneer's, apprentice auctioneer's or auction firm's name and license number shall be clearly given. If an auctioneer is working for or in conjunction with an auction firm, such relationships must be disclosed and both license numbers shall be clearly given. A general advertisement which does not concern a specific sale(s) and which does not list sale dates, times or locations, generally referred to as trolling or holding advertisements, is not subject to any identification requirement. A licensee may advertise under a name, assumed name, trade name, or combination of names, only if proper written notice has been previously filed with the Board. The licensee shall also notify the Board of all certificates filed with any county register of deeds in compliance with G.S. 66-68.

(b) Any licensee who advertises an "Estate Sale" must specifically disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale", the majority of items in the sale must come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if specifically disclosed at or before the time of the auction.

(c) Any licensee who advertises a "Bankruptcy Sale" or that any item is from a bankruptcy action must specifically disclose, in all advertisement materials, the name of the bankrupt party and the date the bankruptcy action was closed. Before conducting an auction as a "bankruptcy sale", the majority of the items in the sale must come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if specifically disclosed at or before the time of the auction.

(d) (e) It shall be a violation of these Rules to advertise an item, either real or personal, as "absolute" or "without reserve" if the item is subject to confirmation, minimum bid, or any other condition of sale. Before advertising an auction as absolute or without reserve, the majority of items in the sale must be sold offered for sale absolute or without reserve. Items that are not absolute may be included in the auction provided they are specifically designated as such in all announcements or advertisements.

(e) (d) It shall be a violation of these Rules to advertise

any auction using such descriptive words as "Urgent", "Emergency", "Distress" or any other word which connotes liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent", the nature of the "emergency" or the cause of the "distress", etc.

(f) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized", "Confiscated," "Forfeited" or any other word which connotes a governmental action whereby items are seized or taken by a government department, agency or commission and released or sold or that the buyers will, for some governmental reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(g) It shall be a violation of these Rules to advertise any item as being from an "estate" or a "bankruptcy", or from an "urgent", "emergency", "distress", "seized", "confiscated", "forfeited" or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), or a federal, state or local department, agency or commission charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(h) (e) It shall be a violation of these Rules to:

- (1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless such act or law is required, by law, to be referenced;
- (2) Reference or mention any federal, state or local department, agency or commission in any advertisement unless specifically required by law to do so or unless prior written approval is received from such department, agency or commission; or
- (3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of or required by federal or state law or act or a federal, state or local agency or commission and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(i) (f) It shall be a violation of these Rules to advertise for sale items which the auctioneer/firm does not ~~actually plan~~ intend to offer for sale at the advertised auction.

(j) (g) It shall be a violation of these Rules for an auctioneer or auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and Rules.

Statutory Authority G.S. 85B-1; 85B-3(f); 85B-8(a)(4).

CHAPTER 6 - BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Barber Examiners intends to amend rules cited as 21 NCAC 6H .0002; 6J .0002; 6K .0003.

Proposed Effective Date: February 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): All persons wishing to demand a hearing should contact Donna Pair at 3000 Industrial Drive, Bldg. G, Raleigh, NC 27609 before December 15, 1995.

Reason for Proposed Action:

21 NCAC 6H .0002 is to comply with the General Assembly's passing of House Bill 85.

21 NCAC 6J .0002 and 21 NCAC 6K .0003 is to improve upon the no show rate of students at the examinations.

Comment Procedures: Written comments and questions should be directed to Donna Pair, 3000 Industrial Drive, Bldg. G, Raleigh, NC 27609, (919) 715-5000.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SUBCHAPTER 6H - BARBER SCHOOL OWNERS AND MANAGERS

.0002 STUDENT-INSTRUCTOR RATIO

(a) The student-instructor ratio at a barber school shall be as follows:

- (1) Two full time instructors for the first 50 students enrolled;
- (2) Three full time instructors if the student enrollment exceeds 50;
- (3) Four full time instructors if the student enrollment exceeds 75;
- (4) One additional instructor for each additional 25 students in excess of 100.

(b) When in need of an instructor of barbering in order to maintain the student-instructor ratio, a barber school manager shall have a maximum of 30 days in which to bring the school into compliance with this Rule.

(c) The provisions of Paragraph (a) of this Rule shall not apply to schools that are nonprofit educational institutions with a curriculum and continuing education support system established with a State university or community college. Such schools shall have at least one instructor for every 20 enrolled students, provided the one instructor may not conduct classroom lectures and study periods, or lectures and demonstrations on practical work, during the same time the one instructor is providing students with supervised practice in barbering. Schools that are subject to this

Paragraph shall provide to the Board written evidence from the Internal Revenue Service of the school's nonprofit educational institution status and written evidence from a State university or community college describing the curriculum and continuing education support system established therewith.

Statutory Authority G.S. 86A-22.

SUBCHAPTER 6J - APPRENTICE BARBERS

.0002 FORFEITURE OF FEE

The examination fee paid by an apprentice shall be forfeited if the applicant fails to ~~appear for the examination~~ to pay all monies owed for test and license by the tenth day before the exam after the Board has notified him of the Board's acceptance of his application and of the date and time of the next examination. A new fee shall be required to sit for the examination after forfeiture.

Statutory Authority G.S. 86A-25.

SUBCHAPTER 6K - REGISTERED BARBER

.0003 FORFEITURE OF FEE

The examination fee paid by a registered barber applicant shall be forfeited if the applicant fails to ~~appear for the examination~~ to pay all monies owed for test and license by the tenth day before the exam after the Board has notified him of the Board's acceptance of his application and of the date and time of the next examination. A new fee shall be required to sit for the examination after forfeiture.

Statutory Authority G.S. 86A-25.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of CPA Examiners intends to amend rules cited as 21 NCAC 8A .0301; 8F .0103; 8G .0404, .0409; 8I .0004; 8J .0001, .0006; 8M .0102 - .0103, .0206 - .0207, .0304, .0401 - .0402 and 8N .0306.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on December 18, 1995 at NC State Board of CPA Examiners, 1101 Oberlin Road, Ste. 104, Raleigh, NC 27605.

Reason for Proposed Action:

21 NCAC 8A .0301 - Define a term that already exists in the Board rules and was previously defined in the rules prior to 1994.

21 NCAC 8F .0103 - Stagger receipt of applications for the CPA exam in order to better utilize staff time and allow a more thorough review of initial applications.

21 NCAC 8G .0404 - Reflect a change forwarded by the AICPA regarding fields of study of the CPE curriculum.

21 NCAC 8G .0409 - Clarify that a CPE course should be for CPAs in order to receive credit for instruction.

21 NCAC 8I .0004 - Remove modification of discipline as a requirement for reinstatement from forfeiture.

21 NCAC 8J .0001 - Add language that clarifies the deadline for renewals and the reinstatement process after forfeiture.

21 NCAC 8J .0006 - Clarify the reinstatement process after forfeiture.

21 NCAC 8M .0102 - Clarify the SQR documentation process and remove a Note that is no longer necessary.

21 NCAC 8M .0103 - Remove a Note that is no longer necessary.

21 NCAC 8M .0206, .0207, .0304 - Correct a reference within the rules.

21 NCAC 8M .0401 - Clarify the duties of the SQR Committee.

21 NCAC 8M .0402 - Correct a reference within the rule.

21 NCAC 8N .0306 - Clarify the requirements for use of specialty designations.

Comment Procedures: Any person interested in these rules may present written comments to the Board office no later than 8:30 a.m. on December 18, 1995. Anyone planning to attend or present oral comments relevant to the action proposed at the rule-making hearing should notify the receptionist at the Board office by 5:00 p.m. on December 1, 1995. Those individuals wishing to make oral comments should indicate which proposals they are speaking to and whether they will speak in favor or against the proposal. Anyone speaking on the proposal will be limited to a total of 10 minutes.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 8.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired," "Inactive," or "Conditional" status;
- (2) "AICPA" means the American Institute of

Certified Public Accountants;

- (3) "Applicant" means a person who has applied to take the CPA examination;
- (4) "Attest service" means providing:
 - (A) any audit,
 - (B) any review of a financial statement,
 - (C) any compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence, and
 - (D) any examination of prospective financial information;
- (5) "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (6) "Board" means the North Carolina State Board of Certified Public Accountant Examiners;
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;
- (9) "Client" means one who orally or in writing agrees with a person or firm holding out pursuant to 21 NCAC 8A .0308 to receive any services included in 21 NCAC 8A .0307;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;
- (12) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year;
- (13) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (14) "CPA" means certified public accountant;
- (15) "CPE" means continuing professional education;
- (16) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or

- the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) "Disclosure" means a written statement of the service to be rendered with the contingent fee to be charged and which is dated and signed by the client;
- (18) "Examination of prospective financial information" means an evaluation by a CPA of:
- (A) a forecast or projection,
 - (B) the support underlying the assumptions in the forecast or projection,
 - (C) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and
 - (D) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;
- (19) "FASB" means the Financial Accounting Standards Board;
- (20) "Firm" means an individual proprietor, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership;
- (21) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;
- (22) "GASB" means the Governmental Accounting Standards Board;
- (23) "Inactive," when used to refer to the status of a person, describes one who has voluntarily surrendered a certificate of qualification and who does not use the title "certified public accountant" nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he or she nor anyone else refers to him or her in any representation as described in 21 NCAC 8A .0308(b). Unrevoked inactive certificates shall be kept by the Board until change of status of the former certificate holder;
- (24) "IRS" means the Internal Revenue Service;
- (25) "License year" means the 12 months beginning July 1 and ending June 30;
- (26) "Member of a firm" means any CPA who has an ownership interest in a CPA firm including owners, partners, and shareholders;
- (27) "NASBA" means the National Association of State Boards of Accountancy;
- (28) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (29) "North Carolina office" means any office physically located in North Carolina;
- (30) "Participating firm" means a firm participating in the SQR program. It does not include firms exempt by reason of 21 NCAC 8M .0102(a) or deemed in compliance pursuant to 21 NCAC 8M .0104;
- (31) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (32) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;
- (33) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (34) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who does not receive any earned compensation for current personal services in any job whatsoever; however, this does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA. Limited exemptions may be granted in the discretion of the Board only in the following instances when the applicant verifies no intent to return to active status and either:
- (A) the applicant performs no personal services related to the field of accounting, or
 - (B) the applicant is not providing accounting services, is 70 years of age or more, and agrees not to hold himself or herself out as a CPA or use the title in connection with any type of service provided to the public;
- (35) "Revenue Department" means the North Carolina Department of Revenue;
- (36) "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (37) "SQR Advisory Committee" means the State Quality Review Advisory Committee to the Board;
- (38) "SQR Program" means the State Quality Review

- Program of the North Carolina State Board of Certified Public Accountant Examiners;
- (39) "SQR Review team" means that team of CPAs which reviews a firm pursuant to the requirements of Subchapter 8M. A review team may be comprised of one or more members;
- (40) "SQR Review team captain" means that member of a review team who is responsible for the review and supervises the other members of the team;
- (41) "SQR Reviewer" means a member of a review team including the review team captain; ~~and~~
- (42) "Suspension" means a revocation for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension; and
- (43) ~~(42)~~ "Trade name" means a name used to designate a business enterprise.

Statutory Authority G.S. 93-1; 93-12(8c).

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

.0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations must be filed with the Board, accompanied by a check for the amount of the examination fee and made payable to the "Board of CPA Examiners." The Board sets the fee for each examination at the amount that enables the Board to recover its costs in administering the examination. If a check fails to clear the bank, the application shall be deemed incomplete and returned.

(b) Completed initial applications shall be postmarked with proper postage not later than the last day of January for the spring examination and not later than the last day of July for the fall examination. Completed re-exam applications shall be postmarked with proper postage not later than the last day of February for the spring ~~examination~~, examination and not later than the last day of August for the fall ~~examination, unless examination.~~ examination. If one of those dates falls on a weekend or federal holiday, ~~in which case~~ the application must be postmarked or received in the Board office on the next business day. Only a U.S. Postal Service cancellation will be considered as the postmark.

(c) The initial application filed to take the examination must include supporting documentation demonstrating that all legal requirements have been met, such as:

- (1) minimum legal age;
- (2) education;
- (3) experience, if required in order to qualify for the

- examination; and
- (4) good moral character.
- (5) Any person born outside the United States must furnish to the Board office evidence of citizenship; evidence of resident alien status; or
 - (A) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen, or
 - (B) a notarized affidavit of intention to become a U.S. citizen, or
 - (C) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(d) Official transcripts (originals - not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. However, no examination grades shall be released until an official transcript is filed confirming the information supplied in the college registrar's letter. All applicants submitting transcripts from foreign schools for consideration of degree and/or of meeting accountancy course requirements must have had the transcript(s) evaluated by a Board-approved educational evaluation service. Applicants are responsible for determining that their transcripts contain all information required by these Rules.

(e) If experience is required to qualify for examination, affidavits must be prepared and signed by employers on forms supplied by the Board.

(f) In order to document good moral character as required by Subparagraph (c)(4) of this Rule, three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

(g) All applications for re-examination must be accompanied by three new certificates of moral character. No additional statements and affidavits regarding experience and education shall be required for applications for re-examination.

(h) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of court records if the applicant has been convicted or found guilty of or pleaded nolo contendere to any felony, or to any other criminal offense of which an essential element is:

- (1) dishonesty, deceit, or fraud;
- (2) violation of a federal or state tax law; or
- (3) commission of any act or conduct discreditable to the accountancy profession in violation of the Rules of Professional Ethics and Conduct for Certified Public Accountants, unless such information has been furnished in a previous application filed with the Board.

(i) If an applicant has been denied any license by any

state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(j) Two recent identical photographs must accompany the application for the CPA examination. These photographs shall have been taken within the last six months. The photographs shall be of the applicant alone, 2 x 2 inches in size, with an image size from the bottom of the chin to the top of the head, including hair, of between 1 and 1-3/8 inches. Photographs must be clear, front view, full face, taken in normal street attire without a hat or dark glasses, and printed on thin paper with a plain light background. They must be capable of withstanding a mounting temperature of 225 degrees Fahrenheit (107 degrees Celsius). They may be in black and white or in color. Snapshots, most vending-machine prints, and magazine or full-length photographs are unacceptable. Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

(k) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

Statutory Authority G.S. 93-12(3); 93-12(4); 93-12(5).

SUBCHAPTER 8G - CONTINUING PROFESSIONAL EDUCATION (CPE)

SECTION .0400 - CPE REQUIREMENTS

.0404 REQUIREMENTS FOR CPE CREDIT

(a) A CPA will not be granted CPE credit for a course unless the course:

- (1) is in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;
- (2) is actually developed by an individual who is qualified to teach the subject matter of the course;
- (3) uses appropriate instructional techniques; and
- (4) uses current and accurate materials.

(b) The six fields of study recognized by the Board are based on the subject areas that are set forth in the AICPA National CPE Curriculum. The six fields are accounting and auditing, advisory consulting services, management, personal development, specialized knowledge and applications, and taxation.

- (1) The accounting and auditing field of study includes accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative account-

ing principles issued by the standard-setting bodies, and any other related subject generally classified within the accounting discipline. It also includes auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and the reporting on the results of audit findings, compilation, and review.

- (2) The advisory consulting services field of study deals with all advisory consulting services provided by professional accountants--management, business, personal, and other. It includes management advisory consulting services and personal financial planning services. This field also covers an organization's various systems, the services provided by consultant practitioners, and the engagement management techniques that are typically used. An organization's systems include those dealing with planning, organizing, and controlling any phase of individual financial activity and business activity. Services provided encompass those for management, such as designing, implementing, and evaluating operating systems for organizations, as well as business advisory consulting services and personal financial planning.

- (3) The management field of study considers the management needs of individuals primarily in public practice, industry, and government. Some subjects concentrate on the practice management area of the public practitioner, such as organizational structures, marketing services, human resource management, and administrative practices. For individuals in industry, there are subjects dealing with the financial management of the organization, including information systems, budgeting, and asset management, as well as items covering management planning, buying and selling businesses, contracting for goods and services, and foreign operations. For CPAs in government, this curriculum embraces budgeting, cost analysis, human resource management, and financial management in state and local governmental entities. In general, the emphasis in this field is on the specific management needs of CPAs and not on general management skills.
- (4) The personal development field of study includes becoming a competent people manager, which covers such skills as communications, managing the group process, and dealing effectively with others in interviewing, counseling, and career planning. Public relations and professional ethics are also treated.

- (5) The specialized knowledge and applications field of study treats subjects related to specialized

industries, such as not-for-profit organizations, health care, and oil and gas. An industry is defined as specialized if it has unusual:

- (A) forms of organization;
 - (B) economic structure;
 - (C) sources of financing;
 - (D) statutory or regulatory requirements;
 - (E) marketing or distribution;
 - (F) terminology; or
 - (G) technology; and
 - (H) employs unique accounting principles and practices;
 - (I) encounters unique tax problems;
 - (J) requires unique ~~advisory~~ consulting services; or
 - (K) faces unique audit issues.
- (6) The taxation field of study includes subjects dealing with tax compliance and tax planning. Compliance covers tax return preparation and review and IRS examinations, ruling requests, and protests. Tax planning focuses on applying tax rules to prospective transactions and understanding the tax implications of unusual or complex transactions. Recognizing alternative tax treatments and advising the client on tax saving opportunities are also part of tax planning.

(c) In addition to courses sponsored by approved sponsors, the following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) formal educational programs conducted within an association of accounting firms; and
- (5) formal correspondence courses.

A CPA may claim credit for a course offered by a non-approved sponsor provided that the course meets the requirements of 21 NCAC 8G .0403(d), 8G .0404, and 21 NCAC 8G .0409. It is the responsibility of the CPA to maintain documentation proving that the course met these standards.

(d) Notwithstanding Paragraph (a) of this Rule, CPE credit may be granted for teaching a CPE course or authoring a publication as long as the preparation to teach or write increased the CPA's professional competency and was in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule.

Statutory Authority G.S. 93-12(8b).

.0409 COMPUTATION OF CPE CREDITS

(a) Group Courses: Non-College. CPE credit for a group course that is not part of a college curriculum is given based on contact hours. A contact hour is 50 minutes of instruction. Credit is granted only for full contact hours. For example, a group course lasting 100 minutes is two contact hours and thus two CPE credits, and a group course lasting between 50 and 100 minutes is only one contact hour and thus only one CPE credit. When individual segments of a group course are less than 50 minutes, the sum of the individual segments is added to determine the number of contact hours. For example, five 30-minute presentations are 150 minutes, which is three contact hours and three CPE credits. No credit shall be allowed for a segment unless the participant completes the entire segment.

(b) Completing a College Course. CPE credit for completing a college course in the college curriculum will be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit is 15 CPE credits; one quarter hour of college credit is ten CPE credits; and one continuing education unit (CEU) is ten CPE credits. If a college course does not carry credit, CPE credit for the course will be based on the number of contact hours of the course using the formula set out in Paragraph (a) of this Rule. However, under no circumstances will CPE credit be given to a CPA who audits a college course.

(c) Self Study. CPE credit for a self-study course is given based on the average number of contact hours needed to complete the course. One-half of the average completion time is allowed for CPE credit. A sponsor must determine, on the basis of pre-tests, the average number of contact hours it takes to complete a course.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course for CPAs is given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year may be credits for preparing for and presenting a course. CPE credit for preparing for and presenting a course is allowed only once a year for a course presented more than once in the same year by the same CPA.

(e) Authoring a Publication. CPE credit for published articles and books is given based on the number of contact hours the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year may be credits for published articles or books.

(f) Instructing a College Course. CPE credit for instructing a graduate level college course is given based on the number of credit hours the college gives a student for successfully completing the course, using the calculation set forth in Paragraph (b) of this Rule. Credit will not be given for instructing an undergraduate level course. In addition, no more than 50 percent of the CPE credits required for a year may be credits for instructing a college course and, if CPE credit is also claimed under Paragraph (d) of this Rule, no more than 50 percent of the CPE credits required for a year may be credits claimed under Paragraph (d) and this

Paragraph. CPE credit for instructing a college course is allowed only once for a course presented more than once in the same year by the same CPA.

(g) Interactive Self-Study. CPE credit for interactive self-study is based on a program designed to use interactive learning methodologies that simulate a classroom learning process by employing computer software, other course material, or administrative systems that provide significant ongoing, interactive feedback to the learner regarding their learning progress. The sponsor must determine the CPE credit to be allowed based on the average number of contact hours needed to complete the course.

Statutory Authority G.S. 93-12(8b).

SUBCHAPTER 8I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

.0004 MODIFICATION OF DISCIPLINE AND NEW CERTIFICATE

(a) A person or firm that has been disciplined by the Board may apply to the Board for modification of the discipline at any time after the effective date of the Board's decision imposing it; however, if any previous application has been made with respect to the same discipline, no additional application shall be considered before the lapse of one year following the Board's decision on that previous application. Provided, however, that an application to modify permanent revocation shall not be considered until after five years from the date of the original discipline, nor more often than three years after the Board's last decision on any prior application for modification.

(b) The application for modification of discipline or for a new certificate shall be in writing, shall set out and, as appropriate, shall demonstrate good cause for the relief sought. The application for an individual shall be accompanied by at least three supporting recommendations, made under oath, from CPAs who have personal knowledge of the activities of the applicant since the discipline was imposed. The application for a firm shall be accompanied by at least three supporting recommendations, made under oath, for each partner, member, or shareholder, from CPAs who have personal knowledge of the activities of the partner, member, or shareholder, since the discipline was imposed.

(c) "Good cause" as used in Paragraph (b) of this Rule means that the applicant is completely rehabilitated with respect to the conduct which was the basis of the discipline. Evidence demonstrating such rehabilitation shall include evidence:

- (1) that such person has not engaged in any conduct during the discipline period which, if that person had been licensed or registered during such period, would have constituted the basis for discipline pursuant to G.S. 93-12(9);
- (2) that, with respect to any criminal conviction which constituted any part of the previous

discipline, the person has completed the sentence imposed; and

- (3) that, with respect to a court order, restitution has been made to any aggrieved party.

(d) In determining good cause, the Board may consider all the applicant's activities since the disciplinary penalty was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the applicant was in good standing with the Board, the applicant's rehabilitative efforts, restitution to damaged parties in the matter for which the penalty was imposed, and the applicant's general reputation for truth and professional probity. For the purpose of this Paragraph, "applicant" shall, in the case of a firm, include partners, members, or shareholders.

(e) Any person who applies for a modification of discipline and for a new certificate after revocation ~~or forfeiture~~ shall, in addition to the other requirements of this Section, comply with all qualifications and requirements for initial certification which exist at the time of the application.

(f) No application for a new certificate or for modification of discipline shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or suspended sentence, any of which are imposed as a result of having been convicted or plead to a criminal charge.

(g) An application shall ordinarily be ruled upon by the Board on the basis of the recommendations and evidence submitted in support thereof. However, the Board may make additional inquiries of any person or persons, or request additional evidence it deems appropriate.

(h) As a condition for a new certificate or modification of discipline, the Board may impose terms and conditions it considers suitable.

Statutory Authority G.S. 55B-12; 93-2; 93-12(7a); 93-12(7b); 93-12(9).

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE, AND REAPPLICATION

(a) All active CPAs must renew their certificates annually by the first day of July. The fee for such renewal is the maximum amount allowed by statute.

(b) To renew a certificate a CPA must submit to the Board:

- (1) a properly completed certificate renewal application form;
- (2) a properly completed CPE report, as required by 21 NCAC 8G .0406(a); and
- (3) the annual renewal fee.

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board will send notice of such failure in the form of a demand letter to

the CPA at the most recent mailing address the Board has on file. Completed renewal application packages shall be postmarked with proper postage not later than 30 days after the mailing date of the demand letter, unless that date falls on a weekend, in which case the renewal package must be postmarked or received in the Board office on the next business day. For renewal packages sent via the U.S. Postal Service, only a U.S. Postal Service cancellation shall be considered as the postmark. If the renewal package is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after such notice is mailed automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

(d) Upon forfeiture of a certificate, the certificate holder is no longer a CPA and the Board will send notice of such forfeiture to the certificate holder by certified mail to the most recent mailing address the Board has on file. The certificate holder shall return the certificate to the Board office within five days after receipt of notice of forfeiture or, if the certificate has been destroyed or lost, shall submit an affidavit, on a form supplied by the Board, within ten days of receipt of such notice that the certificate has been destroyed or has been lost and will be returned to the Board if found.

(e) A person who has forfeited a certificate pursuant to G.S. 93-12(15) for failure to renew his or her certificate may apply for a new certificate reinstatement under 21 NCAC 8J-.0004 8J .0006.

Statutory Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-12(8b); 93-12(15).

.0006 FORFEITURE OR SURRENDER OF CERTIFICATE AND REINSTATEMENT

(a) A certificate holder who determines that the certificate of qualification issued by the Board is no longer needed or desired may voluntarily surrender the certificate and shall be considered inactive.

(b) A person who has surrendered or forfeited a certificate is no longer a CPA and thus is not subject to the renewal fee or CPE requirements contained in these Rules.

(c) A person who desires to reinstate a surrendered or forfeited certificate shall make application and provide the following to the Board:

- (1) payment of the current certificate application fee;
- (2) three certificates of moral character and endorsements as to eligibility signed by CPAs holding valid certificates granted by any state or territory of the United States or the District of Columbia; and
- (3) evidence of satisfactory completion of the CPE requirement described in 21 NCAC 8J .0005(c)(2).

(d) The certificate may be reinstated in the discretion of the Board.

Statutory Authority G.S. 93-12(5); 93-12(8a); 93-12(8b).

SUBCHAPTER 8M - STATE QUALITY REVIEW PROGRAM

SECTION .0100 - GENERAL SQR REQUIREMENTS

.0102 REGISTRATION REQUIREMENTS

(a) A firm which has not performed any audits, reviews or compilations during the 12 months prior to the year-end of the registration required by 21 NCAC 8J .0008(a) and (b) shall be exempt from the SQR program for the 12 months following the year-end but not from registering with the Board.

(b) Unless exempt under Paragraph (a) of this Rule, each ongoing firm must complete an SQR within 12 months following the year-end of each registration unless it has completed an SQR within 24 months prior to the year-end.

(c) Unless exempt under Paragraph (a) of this Rule, a new firm shall complete its initial SQR within 24 months of the date of its initial registration pursuant to 21 NCAC 8J .0008(a).

(d) Every firm not exempt from SQR by Paragraph (a) of this Rule, after completion of a quality review, must procure an affidavit a statement signed by the review team captain, a statement signed by a member of the firm being reviewed, or letter of acceptance from an approved review program, stating that the firm has completed an SQR or one of the review programs listed or referred to in 21 NCAC 8M .0104. The firm shall submit the affidavit statement or documentation with the annual registration following the review as set forth in 21 NCAC 8J .0008(c)(2).

(e) For purposes of this Rule, an SQR is complete when the review team has delivered its report required by 21 NCAC 8M .0306 to the reviewed firm. Any quality review other than SQR is complete when the review team has delivered its final report to the reviewed firm. If mailed, a report shall be deemed delivered when postmarked.

~~Note: For example, firm C was incorporated on June 1, year one. During that year it performed accounting and auditing services and, therefore, was not exempt from the SQR program. It continued to do auditing and accounting work for the next three years (years two, three and four) but it did not do any audits, reviews, or compilations in years five and six. In year seven, the firm completed several compilations but, in year eight, it did not issue any audits, reviews, or compilations. In year nine, the corporation dissolved, at which time it notified the Board of its dissolution pursuant to 21 NCAC 8J .0008(g). The following chart shows the history of firm C as it relates to the SQR program, SQR fees it was required to pay pursuant to 21 NCAC 8J .0010, and when and why it was required to complete an SQR pursuant to this Rule.~~

PROPOSED RULES

| <u>Year</u> | <u>Audits, Reviews or Compilations Performed</u> | <u>Fee</u> | <u>Completion of SQR Required and Rationale</u> |
|-------------|--|------------|---|
| 1 | Yes | SQR Fee | A new firm has 24 months to complete SQR — 21 NCAC 8M .0102(e); the firm is required to |
| 2 | Yes | SQR Fee | complete SQR before June 1, year 3. |
| 3 | Yes | SQR Fee | Completes SQR on May 15, year 3 (within 24 months of its inception) — 21 NCAC 8M .0102(e). |
| 4 | Yes | SQR Fee | Not required to complete SQR in year 5 because the firm completed SQR on May 15, year 3 (within 24 months of year end of year 4) — 21 NCAC 8M .0102(b). |
| 5 | No | Exempt Fee | Will not be required to complete SQR in year 6 because it is exempt — 21 NCAC 8M .0102(a). |
| 6 | No | Exempt Fee | Not required to complete SQR in year 7 because it is exempt — 21 NCAC 8M .0102(a). |
| 7 | Yes | SQR Fee | Will be required to complete SQR in year 8 because it has not completed SQR within 24 months of year end of year 7 (last SQR was completed May 15, year 3) — 21 NCAC 8M .0102(b). |
| 8 | No | Exempt Fee | Completes SQR pursuant to its registration in year 7 — 21 NCAC 8M .0102(b). |
| 9 | Yes | No Fee | Not required to register or pay a fee at year end of year 9 because firm dissolved during year 9 and properly notified the Board — 21 NCAC 8J .0008(g). |

Statutory Authority G.S. 93-12(7b); 93-12(8c).

.0103 PROHIBITION OF ABUSE

Firms may not rearrange their structure or act in any other manner with the intent to avoid participation in SQR.

Note: For example, in year one, firm A is formed and consists of four partners, each holding 25 percent ownership in the firm. It is determined that firm A is a new firm. Therefore, it will be required under 21 NCAC 8M .0102(e) to undergo SQR in year three. However, in year three, firm A splits into two firms, B and C, each having two partners. If it is found that it was the partners' intention to split the firm in order to avoid SQR, both firm B and firm C would be required to undergo SQR in year three. If that was not the partners' intent but in year five [the year when both firm B and C as new firms would be required to undergo SQR under 21 NCAC 8M .0102(e)], B and C merge into firm D with each partner owning 25 percent of

the firm, firm D would be in violation of this Rule and would be required to complete SQR in year five.

Statutory Authority G.S. 93-12(8c).

SECTION .0200 - DUTIES OF THE REVIEWED FIRM

.0206 SELECTION OF A REVIEW TEAM

(a) A participating firm shall select the review team which will perform the firm's SQR.

(b) It is the participating firm's responsibility to see that the review team is qualified under 21 NCAC 8M .0301 and engaged to perform the review in accordance with the standards for the performance of SQR set forth in 21 NCAC 8M .0302 - .0307. .0306.

Statutory Authority G.S. 93-12(8c).

.0207 DUTY TO RESPOND TO QUESTIONS

(a) The participating firm shall respond promptly to questions raised during the review process by any member of the review team, whether oral or written.

(b) The participating firm shall respond in writing to questions raised by the SQR report required by 21 NCAC 8M .0307 .0306 within 30 days from the date the report is delivered to it. The letter of response shall be addressed to the SQR Committee and a copy sent to the review team captain.

Statutory Authority G.S. 93-12(8c).

**SECTION .0300 - REVIEW TEAM:
QUALIFICATIONS AND DUTIES**

**.0304 PERFORMING THE REVIEW -
REVIEWER'S DUTIES**

(a) The objective of the review shall be to determine that the financial statements and related accountant's report on the audit, review or compilation engagements submitted for review do not depart in a material respect from the requirements of professional standards set forth in 21 NCAC 8N .0209-.0211, .0304, and .0403-.0406.

(b) The review team shall read the financial statements submitted by the participating firm and the accountant's audit, review or compilation report thereon.

(c) The review team must determine whether each of the accountant's report and financial statements conform with the applicable professional standards set forth in 21 NCAC 8N .0209-.0211, .0304, and .0403-.0406.

(d) Before issuing its SQR report pursuant to 21 NCAC 8M .0307 .0306, the review team may raise questions with the participating firm either orally or in written form to resolve questions which come to their attention during a review.

(e) The review team shall document the work performed using programs and checklists which provide a reasonable basis for their SQR report.

(f) A review team shall not issue an SQR report, pursuant to 21 NCAC 8M .0307 .0306, unless it has complied with the applicable review standards and requirements.

Statutory Authority G.S. 93-12(8c).

**SECTION .0400 - SQR ADVISORY
COMMITTEE**

**.0401 SQR ADVISORY COMMITTEE -
MEMBERS AND DUTIES**

(a) The SQR Advisory Committee shall consist of six CPAs appointed by the Board and one Board member appointed by the Board's President.

(b) The SQR Committee shall:

- (1) ~~review all initial firm registrations submitted to the Board pursuant to 21 NCAC 8J .0008(a);~~
- (2) ~~review all statements submitted by review team captains to the reviewed firm pursuant to 21 NCAC 8M .0102(d) and submitted to the Board pursuant to 21 NCAC 8J .0008(e)(2);~~

- (1) (3)beginning January 1, 1996, review all modified and adverse SQR reports and letters of comments, if any, submitted by review team captains under the SQR program;
- (2) (4)consider all objections filed pursuant to 21 NCAC 8M .0402(a); and
- (3) (5)make recommendations to the Board consistent with these Rules concerning each of Sub-paragraphs (b)(1) through (4) and (2).

(c) Prior to making any recommendations to the Board, the Committee shall give notice of its proposed recommendation to the firm to which the recommendation pertains.

(d) The Committee shall also recommend remedial action to participating firms receiving modified or adverse reports which, if followed, could increase the participating firm's ability to perform quality services in the public practice of accounting.

(e) The Committee shall report at least annually to the Board on its activities and, further, at any time the Board requests a special report.

Statutory Authority G.S. 93-12(2); 93-12(8c).

**.0402 OBJECTIONS TO SQR ADVISORY
COMMITTEE**

(a) A participating firm may file an objection with the SQR Advisory Committee with regard to an SQR report within 30 days from the date the report is delivered pursuant to 21 NCAC 8M .0307(a) .0306(a). In any other matter before the Committee, a firm to which a proposed recommendation pertains may file an objection within 30 days from notice of the Committee's recommendation.

(b) All objections shall be in writing and shall be addressed to the Committee at the Board's address set forth in 21 NCAC 8A .0102. Objections are filed when received by the Board.

(c) An objection concerning an SQR report shall contain:

- (1) the name of the reviewed firm;
- (2) the name of the review team captain;
- (3) the date the review was completed;
- (4) the conclusions made in the report to which the participating firm objects; and
- (5) in sufficient detail, the participating firm's reasons for objecting to the report's conclusions.

(d) Objections to proposed recommendations of the Committee shall identify the proposed recommendation and shall state the firm's reasons for disagreeing with the Committee's proposed recommendation in sufficient detail.

Statutory Authority G.S. 93-12(2); 93-12(8c).

**SUBCHAPTER 8N - PROFESSIONAL
ETHICS AND CONDUCT**

**SECTION .0300 - RULES APPLICABLE TO
ALL CPAs WHO USE THE CPA TITLE IN
OFFERING OR RENDERING PRODUCTS
OR SERVICES TO CLIENTS**

**.0306 ADVERTISING OR OTHER FORMS
OF SOLICITATION**

(a) Deceptive Advertising. A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is deceptive.

(b) Specialty Designations. A CPA may advertise the nature of services provided to clients but the CPA shall not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation and ~~the title or specialty designation has been approved by the Board~~ individual is currently on active status and in good standing with the granting organization for the separate title or specialty designation.

Statutory Authority G.S. 55B-12; 57C-2-01; 93-12(9).

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to adopt rules defining unprofessional conduct for dentists and dental hygienists. The Board will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on February 16, 1996 at the Office of North Carolina State Board of Dental Examiners, Chatham Building of the Koger Executive Center, 3716 National Drive, Suite 221, Raleigh, NC.

Reason for Proposed Action: To define unprofessional conduct.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rules must, at least 10 days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The

Board's address is NC State Board of Dental Examiners, P.O. Box 32270, Raleigh, NC 27622-2270. Any person may file written submission of comments or argument at any time up to and including March 18, 1996.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend rules cited as 21 NCAC 16H .0104, .0202 - .0203; and adopt rules cited as 21 NCAC 16T .0001 - .0002; 16U .0101 - .0102, .0201 - .0204.

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on February 16, 1996 at the Office of the North Carolina State Board of Dental Examiners, Chatham Building of the Koger Executive Center, 3716 National Drive, Suite 221, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 16H .0104 - to change approved education and training programs and experience requirements qualifying Dental Assistants as Dental Assistant II by deleting the requirement of completion of a formal educational program in radiography consisting of at least 40 clock hours and by replacing the requirement of completion of equivalent training and experience as approved by the Board with the requirement of experience working as a chairside assistant for five of the preceding seven years and completion of training in radiography.

21 NCAC 16H .0202 - to specify that a Dental Assistant I may take radiographs under the direct control and supervision of a dentist, if the Assistant can show evidence of having completed training in radiography consistent with G.S. 90-29(c)(12).

21 NCAC 16H .0203 - to allow a Dental Assistant II to polish the clinical crown using only a combination of a slow speed handpiece, rubber cup or bristle brush, as long as a formal educational course in coronal polishing consisting of at least seven hours has been completed successfully.

21 NCAC 16T .0001 - to require dentists to maintain complete treatment records and to specify information that must be included in the treatment records.

21 NCAC 16T .0002 - to require a dentist to transfer records upon request to a licensed dentist designated by the patient.

21 NCAC 16U .0101 - to specify that the Board's Secretary-Treasurer or the Board's President's designee shall supervise and direct investigations and recommend dispositions of cases.

21 NCAC 16U .0102 - to specify members of the investigative panel and to specify the panel's duties.

21 NCAC 16U .0201 - to specify at what point during the processing of a complaint a licensee will be notified of the

complaint and given an opportunity to respond.

21 NCAC 16U .0202 - to specify possible dispositions of complaints or other investigations.

21 NCAC 16U .0203 - to set out procedures for pre-hearing conferences.

21 NCAC 16U .0204 - to set out procedures for settlement conferences.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rules must, at least 10 days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The Board's address is NC State Board of Dental Examiners, P.O. Box 32270, Raleigh, NC 27622-2270. Any person may file written submission of comments or argument at any time up to and including March 18, 1996.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0100 - CLASSIFICATION AND TRAINING

.0104 APPROVED EDUCATION AND TRAINING PROGRAMS

Education and training programs approved by the North Carolina State Board of Dental Examiners and experience requirements qualifying Dental Assistants as Dental Assistant II include:

- (1) satisfactory completion of one academic year or longer in a Dental Assistant or Dental Hygiene program approved by the Commission on Dental Accreditation of the American Dental Association;
- (2) full-time employment as a chairside assistant (Dental Assistant I) by a dentist licensed in North Carolina for three consecutive years of the preceding five, completion of a Board-approved course in intraoral radiography, and completion of didactic training in a dental assisting course approved by the Board that must include asepsis and dental emergencies;
- (3) successful completion of the certification examination administered by the Dental Assisting National Board and completion of a formal educational program in radiography (which includes an examination) consistent with G.S. 90-29(c)(12) consisting of at least 40 clock hours; and
- (4) completion of equivalent training and experience as approved by the Board, experience working as a chairside assistant for five of the preceding

seven years and completion of training in radiography consistent with G.S. 90-29(c)(12).

Statutory Authority G.S. 90-29(c)(9).

SECTION .0200 - PERMITTED FUNCTIONS OF DENTAL ASSISTANT

.0202 SPECIFIC PERMITTED FUNCTIONS OF DENTAL ASSISTANT I

A Dental Assistant I may do and perform the following acts and functions, after adequate training and qualification, under the direct control and supervision of a dentist, which dentist shall be personally responsible and liable for any and all consequences or results arising from the performance of these acts and functions:

- (1) take radiographs of the mouth, gums, jaws, teeth or any portion thereof for dental diagnostic purposes provided, however, ~~any Dental Assistant I who becomes initially employed after January 1, 1971 must that the assistant can~~ show evidence of having completed ~~at least 40 clock hours in a formal educational program training in radiography (which includes an examination) consistent with G.S. 90-29(c)(12)~~ before being permitted to take radiographs;
- (2) apply topical fluorides directly to the teeth of any person the dentist is treating; and
- (3) apply topical anesthetics or other topical medications within the oral cavity of any person the dentist is treating.

Statutory Authority G.S. 90-29(c)(9); 90-48.

.0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

A Dental Assistant II may do and perform and all acts or functions which may be done or performed by a Dental Assistant I. Additionally, a Dental Assistant II, after adequate training and qualification as provided in 21 NCAC 16H .0104, may be delegated appropriate functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions. A Dental Assistant II may:

- (1) Take impressions for study models and opposing casts which will not be used for construction of dental appliances;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants, provided a dentist has examined the patient and prescribed the procedure; and
- (3) Polish the clinical crown using only a combination of a slow speed handpiece (not to exceed 10,000 rpm), rubber cup or bristle brush and appropriate polishing agents, agents, as long as a formal

educational course in coronal polishing consisting of at least seven hours has been completed successfully. This procedure shall in no way be represented to the patient as a prophylaxis and no specific charge shall be made for such a procedure.

Statutory Authority G.S. 90-29(c)(9); 90-48.

SUBCHAPTER 16T - PATIENT RECORDS

.0001 RECORD CONTENT

A dentist shall maintain complete treatment records on all patients treated. Treatment records may include such information as the dentist deems appropriate but must include the following:

- (1) Patient's full name, address and treatment dates;
- (2) Patient's nearest relative or responsible party;
- (3) Current and complete health history;
- (4) Diagnosis of condition and treatment plans;
- (5) Specific treatment rendered and by whom;
- (6) Name and strength of any medications prescribed, dispensed or administered along with the quantity and date provided;
- (7) Diagnostic aids when applicable and obtainable; and
- (8) Patient's financial records and copies of all insurance claim forms.

Statutory Authority G.S. 90-28; 90-48.

.0002 TRANSFER OF RECORDS UPON REQUEST

A dentist shall, upon request by the patient of record, provide original or copies of radiographs to a licensed dentist designated by the patient. A summary of the treatment record shall be provided to a subsequent treating dentist, upon the dentist's request. A reasonable fee may be charged for duplication of radiographs and diagnostic materials. The treatment summary shall be provided within a reasonable time of the request and shall not be contingent upon current, past or future dental treatment or payment of services.

Statutory Authority G.S. 90-28; 90-48.

SUBCHAPTER 16U - INVESTIGATIONS

SECTION .0100 - PROCEDURES

.0101 SECRETARY-TREASURER

The Board's Secretary-Treasurer or another Board member appointed by the Board's President shall supervise and direct investigations of acts or practices that might violate the provisions of the Dental Practice Act, the Dental Hygiene Act or the Board's Rules. The Secretary-Treasurer or other Board member appointed by the Board's President, in consultation with the Investigative Panel, shall determine

whether cases involving licensees, interns or applicants for licenses or permits shall be set for hearing or settlement conference and recommend to the Board dispositions of cases which are not set for hearing or settlement conference.

Statutory Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-231.

.0102 INVESTIGATIVE PANEL

The Secretary-Treasurer or another Board member appointed by the President shall chair the Investigative Panel. The Board's Counsel, Investigations Coordinator, Investigators and such other staff members as the President may from time to time appoint shall serve on the Panel. The Investigative Panel shall conduct investigations and prepare and present the Board's case in contested case hearings and in civil actions to enjoin the unlawful practice of dentistry.

Statutory Authority G.S. 90-28; 90-40.1; 90-41; 90-41.1; 90-48; 90-223; 90-231; 150B-40.

SECTION .0200 - COMPLAINTS

.0201 PROCESSING

Except in cases requiring emergency action for the protection of the public health, safety or welfare, licensees shall be notified promptly of patient complaints against them regarding dental care and given an opportunity to respond. Licensees who are the subjects of complaints or investigations regarding unlawful activity other than negligence, malpractice or incompetence shall be notified of the nature of the complaint and given an opportunity to respond at such time as the Secretary-Treasurer or other Board member chairing the Investigative Panel determines that notification will not jeopardize the preservation or procurement of relevant evidence.

Statutory Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-231; 150B-41.

.0202 DISPOSITION

The Secretary-Treasurer or other Board member chairing the Investigative Panel shall direct one or more of the following dispositions of each complaint or other investigation:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation to resolve by consent;
- (3) Scheduling for pre-hearing conference with the Investigative Panel;
- (4) Scheduling for settlement conference with the Board; or
- (5) Scheduling, with appropriate notice, for contested case hearing.

Statutory Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-38; 150B-41.

CHAPTER 17 - BOARD OF DIETETICS/ NUTRITION

.0203 PRE-HEARING CONFERENCES

(a) A pre-hearing conference shall not be conducted unless the Respondent agrees to participate.

(b) A pre-hearing conference shall be conducted before the Investigative Panel. At the pre-hearing conference, a Board investigator shall summarize the circumstances of the investigation. The Respondent shall have an opportunity to respond and to submit documentation. The pre-hearing conference shall not be recorded nor open to the public.

(c) Following the pre-hearing conference, the Respondent shall be advised in writing of the proposal for disposition of the matter by the Board member presiding over the pre-hearing conference. If the Board member presiding over the pre-hearing conference deems sanctions are appropriate, a Consent Order or letter of reprimand shall be proposed. Should the Respondent accept the terms, the proposed Consent Order or letter of reprimand must be approved by the full Board. Should the Respondent reject the terms of a proposed Consent Order or letter of reprimand, the Board member presiding over the pre-hearing conference shall direct disposition of the matter under Rule .0202 of this Section.

Statutory Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-41.

.0204 SETTLEMENT CONFERENCES

(a) A settlement conference shall not be conducted unless the Respondent agrees to participate and to waive any objection to the Board being exposed to a forecast of the evidence.

(b) A settlement conference shall be conducted before the Board or a panel of the Board appointed by the President. At the settlement conference, a Board investigator shall summarize the circumstances of the investigation and present a forecast of the Board's evidence. The Respondent shall have an opportunity to forecast his or her evidence. Forecasts of the evidence may be presented orally or in writing and exhibits may be presented. Witnesses may forecast their own testimony but shall not be sworn nor cross-examined. The settlement conference shall not be recorded nor open to the public. The allowed time for initial presentations shall be agreed upon by counsel 10 days prior to the conference, subject to approval by the presiding Board member.

(c) If the Board deems sanctions are appropriate, a Consent Order or letter of reprimand shall be proposed. Should the Respondent reject the terms of the Consent Order or letter of reprimand, a contested case hearing shall be scheduled for the next available Board meeting.

Statutory Authority G.S. 90-28; 90-41; 90-41.1; 90-48; 90-223; 90-229; 90-231; 150B-41.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dietetics/Nutrition intends to amend rules cited as 21 NCAC 17 .0101 - .0102, .0104, .0107, .0113 - .0114; and adopt rules cited as 21 NCAC 17 .0301 - .0304, .0401 - .0402.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 19, 1995 at the Kresge Auditorium, Cate Center, Meredith College, 3800 Hillsborough Street, Raleigh, NC.

Reason for Proposed Action:

21 NCAC 17 .0101 - .0102, .0104, .0107, .0113 - .0114 - To amend rules defining terms and phrases and governing license requirement, application procedures, provisional license, fees, and Code of Ethics for professional practice and conduct. To amend rules to define terms and phrases which have not already been defined in G.S. 90, Article 25 and 21 NCAC 17 .0100; to clarify titles, terms, letters and abbreviations which can only be used by a person who is licensed under G.S. 90, Article 25; to specify application policies and procedures for applicants who have obtained education outside of United States; to define and clarify terms and fees for provisional licensees; to increase issuance, renewal, examination and late fees; and to expand Code of Ethics for professional practice and conduct.

21 NCAC 17 .0301 - .0304, .0401 - .0402 - To adopt rules governing dietetic/nutrition students or trainees, unlicensed individuals aiding the practice of dietetics/nutrition, and unlicensed individuals providing nutrition information. To adopt rules to define terms and phrases referenced in G.S. 90, Article 25 and 21 NCAC 17 .0101 through .0203; to clarify requirements for dietetic/nutrition students or trainees to be in compliance with G.S. 90, Article 25; to establish supervision requirements for dietetic/nutrition students and trainees; and to clarify the records, reports and documentation which must be completed, maintained and submitted on dietetic/nutrition students and trainees. To adopt rules to govern unlicensed individuals aiding the practice of dietetics/nutrition and unlicensed individuals providing nutrition information.

Comment Procedures: Requests to make oral comments at the hearing must be received by the Board no later than 5:00 p.m. on December 4, 1995; written comments must be received by the Board no later than 3:00 p.m. on December 15, 1995. Comments should be limited to five minutes. Requests and comments should be addressed to the Executive Secretary, The North Carolina Board of Dietetics/Nutrition, 1418 Aversboro Road, Garner, NC 27529.

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

SECTION .0100 - LICENSURE

.0101 DEFINITIONS

As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

- (1) "Act" means Dietetics/Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics/nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics/nutrition in the State of North Carolina, together with all information, documents and other materials required by the Board.
- (5) "CDR" means the Commission on Dietetic Registration that is the national certifying agency for voluntary professional credentialing in dietetics and nutrition and is a member of the National Commission for Health Certifying Agencies.
- (6) "CAADE" means the Commission on Accreditation/Approval for Dietetics Education that is the national accrediting/approval body for dietetics education and supervised practice programs and is recognized as an accrediting body by the U.S. Department of Education and the Commission on Recognition of Postsecondary Accreditation (CORPA).
- (7) "Degree" means a degree received from a college or university that was U.S. regionally accredited at the time the degree was conferred.
- (8) "Dietitian/nutritionist" means one engaged in dietetics/nutrition practice.
- (9) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.
- (10) "Herbalist" or other person performing herbalist activities means a person who has received from a regionally accredited college or university a minimum of an associate degree in herbology from a college or university accredited by an agency recognized by the U.S. Department of Education and the Commission on Recognition of Postsecondary Accreditation (CORPA).
- (11) "Health care professional" means an individual who is duly licensed in accordance with an occupational licensing act in G.S. 90 with inclusion of the practice of dietetics/nutrition in the scope of practice which was effective prior to July 13, 1991 and who engages in practice based on the human biosciences. Health care professionals may

include but are not limited to those licensed in G.S. 90 to practice medicine, nursing, occupational therapy, pharmacy, physical therapy, and speech pathology.

- (12) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and ~~dietary~~ food intake and diet history data to determine nutrient needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
- (13) "Nutrition counseling" means the advice and assistance provided by licensed dietitians/nutritionists to individuals or groups on appropriate nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
- (14) "Provisionally licensed dietitian/nutritionist" means a person provisionally licensed under this act.

Statutory Authority G.S. 90-356(2); 90-368(1); 90-368(10).

.0102 REQUIREMENT OF LICENSE

A dietitian registered by the CDR shall have the right to use the title registered dietitian and the designation RD when the dietitian is currently licensed according to G.S. 90, Article 25. A dietitian certified by the American Society for Parenteral and Enteral Nutrition shall have the right to use the title certified nutrition support dietitian and the designation CNSD when the dietitian is currently licensed according to G.S. 90, Article 25.

Statutory Authority G.S. 90-356(2); 90-365.

.0104 APPLICATIONS

(a) Each applicant for initial licensure or renewal shall file a completed application with the Board. The application must be upon the forms and in the manner prescribed by the Board.

(b) Applications shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate nonrefundable fees and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets requirements.

(c) Applications are to be submitted to the address designated by the Board.

(d) Approved applications and all documents filed in support thereof shall become the property of the Board.

(e) The Board will not consider an application as officially submitted until the applicant pays the application fee in full.

(f) The Board must receive all required application materials from applicants seeking examination eligibility

according to the following schedule:

- (1) Applicant seeking examination eligibility from CDR must submit application materials at least 120 days prior to the date the applicant wishes to take the examination.
- (2) Applicant seeking examination eligibility from the Board must submit application at least 180 days prior to the date the applicant wishes to take the examination.

(g) The Executive Secretary will send a notice to an applicant who does not complete the application which lists the additional materials required.

(h) The application for a license shall contain such information as the Board may reasonably require.

(i) The submission of an application for licensing to the Board shall constitute and operate as an authorization and consent by the applicant to the Board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the Board from other sources as required.

(j) Applicants, who must provide evidence of current registration as a Registered Dietitian by the CDR in G.S. 90-357(3)a, shall submit a notarized photocopy of the applicant's registration identification card.

(k) Applicants, who must provide evidence of completing academic requirements in G.S. 90-357(3) b.1, c.1 and d, shall either:

- (1) Submit official transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or
- (2) Request, complete and submit documents for the evaluation of an equivalent major course of study as referenced in 21 NCAC 17 ~~.0003~~ .0103 and submitting official transcripts from all colleges attended.

(l) Applicants, who must provide evidence of completing supervised practice requirements in G.S. 90-367(3)b.2 and c.2, shall either:

- (1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved/accredited to meet the dietetic practice requirements of ADA; or
- (2) Request, complete and submit documents for the evaluation of the supervised practice experience as referenced in 21 NCAC 17 ~~.0003~~ .0103.

(m) Applicants who have obtained their education outside of the United States and its territories must:

- (1) Have their academic degree evaluated by an approved credentialing evaluation agency, as equivalent to the baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Postsecondary

Accreditation and the U.S. Department of Education; and

- (2) Have any diploma or other document required to be submitted to the Board which is not in the English language be accompanied by a certified translation thereof in English by an approved credentials evaluation service; and
- (3) Demonstrate proficiency in the English language through passage of the competency examination as defined in Rule .0105 of this Section Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE) which ~~is~~ are administered by the Educational Testing Service (ETS).

Statutory Authority G.S. 90-356(2); 90-357.

.0107 PROVISIONAL LICENSE

(a) Applicants shall provide evidence of completing academic requirements by:

- (1) Submitting official transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or
- (2) Requesting, completing and submitting documents for the evaluation of an equivalent major course of study as referenced in 21 NCAC 17 ~~.0003~~ .0103 and submitting official transcripts from all colleges attended.

(b) Applicants shall provide evidence of completing supervised practice requirements by:

- (1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved/accredited to meet the dietetic practice requirements of ADA; or
- (2) Requesting, completing and submitting documents for the evaluation of the supervised practice experience as referenced in 21 NCAC 17 ~~.0003~~ .0103.

(c) Applicants shall provide evidence of making application to take the examination.

(d) Provisional license may be issued for a period not exceeding one year and may be renewed from year to year for a period not to exceed five years upon completion of the following:

- (1) payment of annual fees;
- (2) submission of completed application as prescribed by the Board;
- (3) provision of documentation of having completed 15 hours of continuing education approved by the Board for a one year period;
- (4) provision of evidence of making application to retake the examination;

(5) provision of evidence of being under the ~~direct~~ supervision of licensed dietitian(s)/nutritionist(s).

(e) ~~Provisional licensed dietitian/nutritionist shall be under the direct supervision of licensed dietitian(s)/nutritionist(s) as defined in 21 NCAC 17 .0015(b) for at least 70 percent of the hours employed.~~ "Supervision" as referenced in G.S. 90-361 means that licensed dietitian(s)/nutritionist(s) shall:

- (1) be available for consultation on delegated nutrition care activities being performed by the person being supervised; and
- (2) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
- (3) provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening position of influence.

(f) Following the successful completion of the licensing

examination, the provisionally licensed dietitian/nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination referenced in 21 NCAC 17 .0005- .0105. If the provisionally licensed dietitian/nutritionist successfully completes the licensing examination and obtains a license pursuant to G.S. 90-357 within six months of the date that the provisional license became effective, the provisional license or renewal fee shall be deducted from the issuance fee.

(g) The Board will revoke a provisional license if the applicant fails to apply for the examination for licensure in a timely manner or does not take the examination.

Statutory Authority G.S. 90-356(2); 90-356(9); 90-361.

.0113 FEES

In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

| | | |
|--|--------|----------|
| Application Fee | | \$ 25.00 |
| Issuance Fee | 75.00 | 100.00 |
| License Renewal Fee | 25.00 | 50.00 |
| Late Renewal Fee | 50.00 | 100.00 |
| Examination Fee | 100.00 | 150.00 |
| Provisional License Fee | | 35.00 |
| <u>Provisional License Renewal Fee</u> | | 35.00 |
| <u>Provisional License Late Renewal Fee</u> | | 70.00 |
| Duplicate License Certificate Fee | | 20.00 |
| Duplicate License Identification Card Fee | | 10.00 |
| Service Fee for Academic Program Approval by Board | | 50.00 |
| Service Fee for Supervised Practice Program Approval by Board | | 75.00 |
| Service Fee for Approval of License Requirements of Another State, Political Territory or Jurisdiction as Equivalent | | 50.00 |
| Service Fee for Prior Approval by Board for Continuing Educational Programs | | 25.00 |
| Service Fee for Annual Continuing Education Approval by Board for Licensee | | 25.00 |

Statutory Authority G.S. 90-356(2); 90-356(9); 90-361; 90-364.

.0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

Licensees, under the act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code which reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession.

- (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
- (2) The licensee shall avoid discrimination against other individuals on the basis of, but not limited to race, creed, religion, sex, age, national origin or

handicap.

- (3) The licensee shall conduct all practices of dietetics/nutrition with honesty, and integrity.
- (4) The licensee shall fulfill professional commitments.
- (5) The licensee shall practice dietetics/nutrition based on scientific principles and current information.
- (6) The licensee shall assume responsibility and accountability for personal competence in practice.
- (7) The licensee shall inform the public and colleagues of dietetic/nutrition services or products by use of factual information that will not mislead the public.
- (8) The licensee shall not exercise undue influence on

- a client, including the promotion of the sale of services or products, for financial gain of the licensee or of a third party.
- (9) The licensee shall not reveal confidential data or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law.
 - (10) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.
 - (11) The licensee shall take reasonable action, with prior consent of the client, to inform a client's physician or other allied health care practitioner in cases where a client's nutritional status indicates a change in health status.
 - (12) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions.
 - (13) The licensee shall accurately present professional qualifications and credentials as follows:
 - (a) The licensee shall use "LDN" when license is current and authorized by the North Carolina Board of Dietetics/Nutrition.
 - (b) The licensee shall provide accurate information and comply with all requirements of the North Carolina Board of Dietetics/Nutrition when seeking continued credentials from the North Carolina Board of Dietetics/Nutrition.
 - (c) The licensee shall not aid another person in violating any North Carolina Board of Dietetics/Nutrition requirements or aid another person in representing himself/herself as an "LD", "LN" or "LDN" when he/she is not.
 - (14) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic/nutrition services have been rendered only if the licensee has provided or supervised those services.
 - (15) When providing direct supervision to a student, trainee, provisional licensee, or person aiding the practice of dietetics/nutrition, the licensee shall assume responsibility for the supervision.
 - (16) When licensee approves a weight control program, the licensee shall assume responsibility for the general program of weight control including the diet and the guidelines for instruction of customers.
 - (17) The licensee shall comply with all laws and regulations concerning the profession.
 - (18) The licensee shall accept the obligation to protect society and the profession by upholding the Code of Ethics for professional practice and conduct and by reporting alleged misrepresentations and viola-

- (19) tions of the Code and the Act to the Board. The licensee shall not interfere with an investigation of disciplinary proceeding by willful misrepresentation of facts to the Board or its authorized representative or by the use of threats or harassment against any person.
- (20) The licensee or legal representative shall notify the Board and may be subject to disciplinary action by the Board under the following circumstances:
 - (a) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his other ability to practice dietetics/nutrition.
 - (b) The licensee has been adjudged to be mentally incompetent in a court of competent jurisdiction or a determination thereof by other lawful means. This adjudication of mental incompetency shall be conclusive proof of unfitness to practice dietetics/nutrition unless or until such person shall have been subsequently lawfully declared to be mentally competent.
 - (c) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be deemed dangerous to the health and welfare of the client.
 - (d) The licensee has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude under the laws of the United States or any of the states.
 - (e) The licensee has been disciplined by a state and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.
 - (f) The licensee has committed an act of misfeasance or malfeasance in the practice of dietetics/nutrition as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.
 - (g) The licensee has violated any provisions of the act or any of these Rules.
- (21) The licensee shall not intentionally engage in any unauthorized, offensive bodily contact with a client while responsible for the care of that individual.

Statutory Authority G.S. 90-356(3).

SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES

.0301 DEFINITIONS

As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified: "Direct supervision" as referenced in G.S. 90-368(2) means that a licensed dieti-

tian/nutritionist shall:

- (1) be physically present in the facility or institution when an act or function is being performed by the person supervised; and
- (2) provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening position of influence; and
- (3) directly and personally examine, evaluate and approve the acts or functions of the person supervised.

Statutory Authority G.S. 90-356(2); 90-368(2).

.0302 REQUIREMENTS

A person who is enrolled in a course of study to complete the academic requirements in G.S. 90-357(3)b.1., c.1. or d, or who is fulfilling a supervised practice program to complete the experience requirements in G.S. 90-357(3)b.2. or c.2. shall be in compliance with G.S. 90-368 provided that:

- (1) The person is designated by a title which clearly indicates his/her status as a student or trainee and the person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The student or trainee submits evidence of enrollment and forward progress toward fulfillment of requirements to the Board on an annual basis;
- (3) The course of study is approved by the ADA or the Board as referenced in Rule .0103(2)(a), (3)(a) and (4) of this Chapter, and the supervised practice program is accredited by the ADA or approved by the Board as referenced in Rule .0103(2)(b) and (3)(b) of this Chapter;
- (4) The student or trainee is under the direct supervision of a licensed dietitian(s)/nutritionist(s) for at least 70% of the practical experience or supervised practice program; and
- (5) The student or trainee is enrolled in a course of study for a period not to exceed five years and in a supervised practice program for a period not to exceed two years. A student or trainee may submit a written request for Board approval of an extension of the period of time.

Statutory Authority G.S. 90-356(2); 90-368(2).

.0303 SUPERVISION

(a) Each CAADE-accredited/approved or Board-approved dietetics/nutrition program shall designate a Program Director who:

- (1) shall be currently licensed in good standing according to G.S. 90, Article 25;
- (2) may meet the qualifications of the current standards of education as referenced in the third

edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty-one dollars and ninety-five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215;

- (3) shall meet the employment qualifications of the sponsoring institution.

(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:

- (1) provide student/trainee advisement, evaluation, counseling and supervision;
- (2) provide academic or supervised practice program assessment, planning, implementation and evaluation;
- (3) inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including but not limited to the Dietetics/Nutrition Practice Act and its Rules; and
- (4) advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.

(c) The students/trainees shall be directly supervised by licensed dietitians/nutritionists for 70% of the practical experience or supervised practice program.

(d) The faculty/staff who are not licensed according to G.S. 90, Article 25 must have appropriate academic and experiential qualifications for the program areas in which they provide direct supervision of the student/trainee.

Statutory Authority G.S. 90-356(2); 90-368(2).

.0304 RECORDS AND REPORTS

(a) Permanent and current records shall be available for review by representatives of the Board. The Board may make use of facts supplied in determining compliance with G.S. 90-368 and in approving applications for a license.

(b) The record for each enrolled student shall contain up-to-date and complete information, including:

- (1) documentation of admission criteria met by the student;
- (2) transcript of credit hours achieved in the classroom, laboratory and practical experience that reflects progression consistent with program policies.

(c) The Program Director of the dietetics/nutrition program shall document the completion of the academic or supervised practice program requirements for each student or trainee on the forms prescribed by the Board and shall submit the forms to the student or trainee for inclusion in the license application. Each form verifying the completion of the requirements shall include the original signature of

the Program Director and shall include a signature date on or following the date of the program completion.

(d) The Program Director of the dietetics/nutrition program shall file with the Board such records, data, and reports as may be required in order to furnish information concerning operation of the program and concerning any student or graduate of the program. These records, data and reports include but are not necessarily limited to:

- (1) an Annual Report giving all data requested on the form provided by the Board for the period beginning fall term through summer term and submitted to the Board office within 20 business days after the initiation of the fall term but no later than October 1 of the current year;
- (2) a Supplementary Report giving all data requested on the form provided by the Board for any changes that have occurred on the current Annual Report and submitted to the Board office no later than 20 business days after the occurrence of that change;
- (3) a Graduation Report giving all data requested on the form provided by the Board for the current graduation period no later than 20 business days after the date of the graduation;
- (4) a Supervised Practice Program Completion Report giving all data requested on the form provided by the Board for the current program period no later than 20 business days prior to the completion date of the program;
- (5) notification of any change in employment of the Program Director within 20 business days of the effective date of the change;
- (6) notification of any change in the person(s) providing direct supervision of the student(s)/trainee(s) within 20 business days of the effective date of the change;

(e) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with standards of education, the law and the rules of the Board.

Statutory Authority G.S. 90-356(2); 90-368(2).

SECTION .0400 - UNLICENSED INDIVIDUALS

.0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS/NUTRITION

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

- (1) "Certified Dietary Manager" means an individual who is certified by the Certifying Board of the Dietary Managers and meets the standards and qualifications as referenced in the "Dietary Manager Training Program Requirements". These standards include any subsequent amendments and editions of the referenced manual.

Copies of the "Dietary Manager Training Program Requirements" may be purchased for fifteen dollars (\$15.00) from the Dietary Managers Association, One Pierce Place, Suite 1120W, Itasca, Illinois 60143.

- (2) "Dietetic Technician Registered" or "DTR" means an individual who is registered by the Commission on Dietetic Registration of the American Dietetic Association according to the standards and qualifications as referenced in the third edition of the "Accreditation/Approval Manual for Dietetic Education Programs". This standard includes any subsequent amendments and editions of the referenced material. Copies of this manual may be purchased for twenty-one dollars and ninety-five cents (\$21.95) plus three dollars and fifty cents (\$3.50) minimum shipping and handling from the ADA Sales Order Department, P.O. Box 97215, Chicago, IL 60678-7215.
- (3) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist shall:
 - (A) be available for consultation on delegated nutrition care activities being performed by the person being supervised; and
 - (B) directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
 - (C) provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening position of influence.
- (4) "Nutrition care activities" means activities performed by unlicensed personnel which are delegated by licensed dietitians/nutritionists in accordance with Paragraphs (c) and (d) of this Rule and which support the provision of nutrition care services as referenced in G.S. 90-352(4). Nutrition care activities include the provision of nutrition care to prevent a medical condition, illness or injury and the provision of weight control programs or services.

(b) Unlicensed personnel aiding the practice of dietetics/nutrition may include but are not limited to the following:

- (1) a Certified Dietary Manager;
- (2) a Dietetic Technician Registered; or
- (3) an individual who has met the academic requirements as referenced in G.S. 90-357(3)b.1, c.1 and d.

(c) The licensed dietitian/nutritionist may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel. The licensed dietitian/nutritionist is responsible for supervision of the nutrition care activities of the unlicensed personnel and maintains responsibility for nutrition care activities performed by all personnel to whom

the care is delegated. The acts and functions included in the scope of employment or contract of persons providing nutrition care services, nutrition care activities, weight control services and nutrition information or education shall be documented in writing.

(d) The following variables are to be considered by the licensed dietitian/nutritionist in determining whether or not an activity may be delegated to unlicensed personnel and in determining the amount of direct supervision which is required on site:

- (1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;
- (2) verification of competence of the unlicensed personnel;
- (3) the variables in each service setting which include but are not limited to:
 - (A) the complexity and frequency of nutrition care needed by a given client population;
 - (B) the acuity and stability of the client's condition;
 - (C) the accessible resources; and
 - (D) established policies, procedures, practices, and channels of communication which lend support to the types of nutrition care activities being delegated, or not delegated, to unlicensed personnel.

Statutory Authority G.S. 90-356(2); 90-368(4).

.0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION

(a) As used in this Section, the following terms and phrases, which have not already been defined in G.S. 90, Article 25, shall have the meanings specified:

- (1) "Nutrition information" means nonfraudulent nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on valid scientific evidence, reports and studies. Nutrition information is not based on an individual nutrition assessment as referenced in G.S. 90-352 and 21 NCAC 17 .0101(9) and is not individualized to provide nutrition care services to prevent, manage, treat, cure or rehabilitate a medical condition, illness, or injury for a specific person or group as referenced in G.S. 90-352 and 21 NCAC 17 .0101 (10).
- (2) "Reported or historical use" means information about food, food materials or dietary supplements which is based on the following:
 - (A) historical or methodological studies or research conducted by qualified experts in the field using sound scientific methods with randomized controlled clinical trials; or

(B) reports on valid scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

(b) An individual who provides nutrition information or education shall be in compliance with G.S. 90-368 provided that:

- (1) The person does not hold himself/herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he/she is a dietitian/nutritionist;
- (2) The person does not provide nutrition care services or nutrition care activities which have not been delegated to him/her by a licensed dietitian/nutritionist;
- (3) The person provides nutrition information on or about food, food materials or dietary supplements, and does not provide nutrition information on the nutritional needs of the consumer;
- (4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements or other goods to be provided or sold, and does not provide nutrition information in connection with the marketing and distribution of nutrition services;
- (5) The person provides nonfraudulent nutrition information which is based on valid scientific reports and studies, is not false or misleading, and is safe; and
- (6) The person provides the nutrition information on food, food materials, nutraceuticals, dietary supplements or other goods in accordance with federal, state and local laws, regulations and ordinances, including but not limited to G.S. 90, Article 25.

Statutory Authority G.S. 90-356(2); 90-368.

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Hearing Aid Dealers and Fitters Board intends to amend rules cited as 21 NCAC 22A .0203, .0309; 22F .0003 - .0004, .0007 - .0008, .0013 - .0014, .0016, .0018, .0020; 22I .0008 - .0009; 22K .0004; 22L .0001, .0005 - .0006, .0009 - .0011, .0013, .0015; repeal 21 NCAC 22L .0014 and adopt 21 NCAC 22F .0021; 22K .0005.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on November 30, 1995 at the Richard B. Harrison Public Library, 1313 New Bern Avenue, Raleigh, NC 27610.

Reason for Proposed Action:

21 NCAC 22A .0203 - This rule is proposed for amendment in order to establish bimonthly meetings of the Board.

21 NCAC 22A .0309 - This rule is proposed for amendment in order to clarify that a "duly made application" is one that has been physically received in the office of the Board.

21 NCAC 22F .0003 - This rule is proposed for amendment in order to clarify the procedure for submission of applications to the Board; and to clarify the procedure when fees are paid by company or personal check.

21 NCAC 22F .0004 - This rule is proposed for amendment in order to establish that the Board shall not issue a license by reciprocity.

21 NCAC 22F .0007 - This rule is proposed for amendment in order to establish that the results of the qualifying examination shall be issued no later than ten working days after the date of the examination.

21 NCAC 22F .0008 - This rule is proposed for amendment in order to clarify the procedure for requesting an opportunity to review a failed examination.

21 NCAC 22F .0013 - This rule is proposed for amendment in order to clarify when a report of the apprenticeship experience must be submitted; and to clarify when an apprentice's initial or renewal certificate shall expire.

21 NCAC 22F .0014 - This rule is proposed for amendment in order to establish that the Board must receive written notice of intent to attend the examination preparation workshop at least ten working days prior to the workshop's starting date.

21 NCAC 22F .0016 - This rule is proposed for amendment in order to clarify the procedures that apply when there is a separation of the apprentice and the sponsor.

21 NCAC 22F .0018 - This rule is proposed for amendment in order to clarify the procedure for notifying the Board of address changes.

21 NCAC 22F .0020 - This rule is proposed for amendment in order to clarify the procedure for obtaining information concerning the Board's current requirements for continuing education.

21 NCAC 22F .0021 & 21 NCAC 22K .0005 - These rules are proposed for adoption in order to clarify how an applicant for reinstatement of an expired license satisfies the Board's requirement for annual continuing education, and to establish the circumstances under which the Application for License form is to be used.

21 NCAC 22I .0008 - This rule is proposed for amendment in order to establish the circumstances under which the Board shall require proof of audiometer calibration for an individual applying for annual license renewal.

21 NCAC 22I .0009 - This rule is proposed for amendment in order to clarify the procedure for obtaining information from the Board concerning the approval of calibrators.

21 NCAC 22K .0005 - This rule is proposed for amendment in order to establish the circumstances under which the Application for License form is to be used, and to maintain proper codification.

21 NCAC 22L .0001 - This rule is proposed for amendment

in order to establish that three members of the Board shall serve on the Committee on Investigations and that the Board shall determine whether or not there is probable cause to justify a disciplinary hearing, and to establish the procedure for referring anonymous advertising complaints to the Board's Committee on Investigations.

21 NCAC 22L .0005 - This rule is proposed for amendment in order to clarify the Board's procedure for giving parties in a contested case a notice of hearing.

21 NCAC 22L .0006 - This rule is proposed for amendment in order to establish that, for all of the Board's contested case hearings, the Board shall apply for the designation of an administrative law judge to hear the case.

21 NCAC 22L .0009 - This rule is proposed for amendment in order to clarify the procedure for conducting informal pre-hearing conferences regarding a contested case.

21 NCAC 22L .0010 - This rule is proposed for amendment in order to clarify the procedure for disqualification of a Board member concerning participation in the final agency decision regarding a contested case.

21 NCAC 22L .0011 - This rule is proposed for amendment in order to clarify the procedure for granting continuances and adjournments regarding a contested case.

21 NCAC 22L .0013 - This rule is proposed for amendment in order to clarify the procedure for subpoenas regarding a contested case.

21 NCAC 22L .0014 - This rule is proposed for repeal because it would contradict the proposed amendments to 21 NCAC 22L .0006 which proposes that an administrative law judge shall hear all of the Board's contested cases.

21 NCAC 22L .0015 - This rule is proposed for amendment in order to clarify the procedure for the administrative law judge to issue a proposal for decision and the Board to render its final agency decision regarding a contested case.

Comment Procedures: Written comments concerning these rule-making actions must be received at the Board's office no later than December 15, 1995. Requests to make oral comments at the hearing must be received at the Board's office no later than 11:00 a.m. on November 30, 1995. Oral comments are limited to 10 minutes. Send written correspondence to Rule-making Coordinator, NCSHADFB, 401-111, Oberlin Road, Raleigh, NC 27605.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SUBCHAPTER 22A - BOARD RULES

SECTION .0200 - THE BOARD

.0203 MEETINGS OF THE BOARD

Meetings of the Board shall be held ~~quarterly~~ bimonthly or on the call of the president, the executive secretary, or a majority of the members of the Board. The annual meeting to elect the president and the secretary-treasurer shall occur between the fifteenth day of July and the fifteenth day of

August in each year. The dates for the ~~quarterly~~ bimonthly meetings for the Board's ensuing year and the examination preparation workshop dates for the upcoming calendar year shall be approved at that time.

Statutory Authority G.S. 93D-3(b).

SECTION .0300 - DEFINITIONS

.0309 DULY MADE APPLICATION

"Duly made application" shall mean that the completed application form, including all required documents, photographs, and fees, and any supplemental information requested by the Board, is ~~in the hands of the executive secretary~~ of physically received in the office of the Board.

Statutory Authority G.S. 93D-3(c).

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

.0003 SUBMISSION OF APPLICATIONS AND FEES

(a) A duly made application for issuance or renewal of an apprentice registration certificate shall be submitted to the ~~executive secretary of the~~ Board no later than ten working days after the date that any of the following conditions exist:

- (1) Whenever a registered apprentice is separated from his sponsor for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate;
- (2) Whenever a registered apprentice is notified by the ~~executive secretary of the~~ Board that he failed to pass the qualifying examination and such individual wishes to renew his certificate;
- (3) Whenever the ~~executive secretary of the~~ Board notifies the individual that his apprentice registration certificate has been invalidated for any reason and such individual wishes to obtain a new certificate to replace the invalidated certificate; and
- (4) Whenever an Audiologist duly makes application for issuance of a license by examination and that individual elects to become a registered apprentice in order to engage in the fitting and selling of hearing aids, under the supervision of a licensee approved by the Board, while waiting to take the next scheduled qualifying examination.

(b) A registered apprentice who holds a masters degree in Audiology and is not an Audiologist, as defined in 21 NCAC 22A .0301 (2), ~~may first apply for issuance of a license by examination any time after that individual has completed~~ must complete 250 clock hours of supervision by a licensee approved by the Board. However, no later than ten working days after any registered apprentice who is not an Audiologist has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit

a duly made application for issuance of a license by examination and shall take the next scheduled qualifying examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the qualifying examination.

(c) Whenever a registered applicant is required to take the qualifying examination as a condition for issuance of a license or reissuance of a suspended license, the duly made application shall be considered by the Board to be timely if it is ~~in the hands of the executive secretary~~ received by the Board no later than 30 consecutive days prior to the examination date. The Board shall have the right to refuse any person admission to the qualifying examination if such individual has not duly made application for issuance or reissuance of a license, has not attended an examination preparation workshop as set forth in 21 NCAC 22F .0014 (b), or has not made a timely filing.

(d) All fees should be ~~paid to the executive secretary by a bank check, certified check, or money order and shall be~~ made payable to the N.C. Hearing Aid Dealers and Fitters Board. When a company or personal check is received in payment of any fee, the Board ~~will~~ may wait until final credit on ~~such~~ the check is received before providing the license or other document requested. A processing fee of twenty dollars (\$20.00) (or any greater amount allowed by law) will be charged for any check on which payment is refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank at the time the check was presented to the Board.

Statutory Authority G.S. 93D-3(c); 93D-5; 93D-9.

.0004 QUALIFICATIONS

(a) The Board may require such supplemental information to all applications for issuance and renewal of a license or an apprentice registration certificate as it deems necessary to determine the facts governing the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. Supplemental information may include, but is not necessarily limited to, letters of recommendation, affidavits, photographs, official transcripts, and, if warranted, personal appearances before the Board.

(b) Any registered apprentice who holds a masters degree in Audiology and any Audiologist who elects to be a registered apprentice shall, prior to the next scheduled qualifying examination, submit to 250 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.

(c) Any registered apprentice who is not an Audiologist and does not hold a masters degree in Audiology shall, for each week prior to the next scheduled qualifying examination, submit to 15 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.

(d) Whereas the Board is not compelled to issue any license pursuant to G.S. 93D-6, the Board shall not issue a license by reciprocity.

Statutory Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9.

.0007 COMMUNICATION OF RESULTS OF EXAMINATIONS

(a) Pursuant to G.S. 93B-8 (b), each registered applicant shall be identified by number, rather than by name, for purpose of the examination.

(b) ~~The executive secretary office of the board Board~~ shall issue written notification to each registered applicant, concerning only his own performance on the qualifying examination, no later than ~~14 consecutive~~ 10 working days after the results date of the examination. ~~examination are in the hands of the executive secretary.~~

Statutory Authority G.S. 93B-8; 93D-3(c).

.0008 REVIEW OF EXAMINATION

As set forth in G.S. 93B-8 (c), each registered applicant who takes and does not pass the qualifying examination shall be granted an opportunity to review his examination in the presence of a representative of the Board, upon written request from the applicant. Such written request shall be ~~in the hands of the executive secretary of~~ received by the Board no later than 30 consecutive days after the written notification of the examination results was issued by the ~~executive secretary, Board.~~ Such review shall be held at the Board's ~~offices~~ office unless the ~~executive secretary Board~~ determines that the review should be held at another location.

Statutory Authority G.S. 93B-8; 93D-3(c).

.0013 APPRENTICESHIP REQUIREMENTS

(a) Pursuant to G.S. 93D-9, each individual who duly makes application for issuance or renewal of an apprentice registration certificate shall submit a plan, using the form provided by the Board, for completing the supervision requirement for the apprenticeship. The registered apprentice shall submit a report of the apprenticeship experience, using the form provided by the Board, no later than ten working days after the date that any of the following conditions exist:

- (1) The apprentice and his sponsor are separated for any reason and thus causing the apprentice registration certificate to become invalidated;
- (2) The apprentice, who is not an Audiologist, has held a valid apprentice registration certificate for 365 calendar days;
- (3) The apprentice, who holds a masters degree in Audiology and is not an Audiologist, has completed 250 clock hours of supervision, prior to first taking the qualifying examination;
- (4) The apprentice has been notified by the ~~execu-~~

~~tive secretary of the board Board~~ that he failed the qualifying examination and the individual is reapplying for issuance of a license by ~~examination; examination; or~~

- (5) ~~The apprentice, who has renewed his apprentice registration certificate after failing to pass the qualifying examination, has been notified by the executive secretary of the Board that he has passed the subsequent qualifying examination; or~~
- (5) (6) The Board has issued a written request to the registered apprentice for submission of a report, in order to determine fulfillment of the apprentice experience requirements.

(b) The initial apprentice registration certificate issued to any person who is not an Audiologist, and any subsequently issued replacements for an invalidated certificate, shall expire after the apprentice has held a valid apprentice registration certificate for a total of 365 calendar days. Upon receipt of a duly made application for issuance of a license by examination, the Board shall, when necessary, extend the certificate, at no charge to the registered apprentice, until 30 consecutive days after the results date of the next scheduled qualifying examination. ~~examination are in the hands of the executive secretary of the Board.~~ The initial apprentice registration certificate, and any replacements which are issued to an Audiologist prior to his first taking the qualifying examination, shall expire 30 consecutive days after the results date of the next scheduled qualifying examination. ~~examination are in the hands of the executive secretary of the Board.~~

(c) Whenever any registered apprentice takes and fails to pass the qualifying examination, the individual may duly make application for issuance of a renewal certificate which may be issued for good cause shown to the satisfaction of the Board. Such certificate shall expire 30 consecutive days after the results date of the next scheduled qualifying examination. ~~examination are in the hands of the executive secretary of the Board.~~

(d) All registered apprentices shall comply with the rules and regulations, including the code of ethics, promulgated by the Board and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina. Failure to comply shall be sufficient grounds to invalidate an apprentice registration certificate, to deny future applications for issuance of an apprentice registration certificate, to deny renewal of an apprentice registration certificate, or to deny, suspend or revoke a license after proper notice and hearing.

Statutory Authority G.S. 93D-3(c); 93D-9(e).

.0014 TRAINING AND SUPERVISION

(a) Each registered apprentice, excluding those Audiologists who elect to be a registered apprentice while waiting to take the qualifying examination for the first time, shall submit to direct supervision by a licensee who is approved by the Board and who shall be responsible for the apprentice's training and supervision in the following areas:

- (1) Anatomy, physiology, and pathology of the auditory mechanism;
- (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) Hearing aid technology including instrument circuitry and acoustic performance data;
- (4) Design, selection, and modification of earmold/shell coupling systems;
- (5) Hearing aid selection procedures, and fitting and adjustment techniques;
- (6) Post-delivery care including hearing aid orientation and counseling techniques, and hearing aid servicing;
- (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) Other related topics that the sponsor or apprentice deem necessary.

(b) Before taking the qualifying examination for the first time, each registered apprentice who is not an Audiologist shall attend an examination preparation workshop, approved or sponsored by the Board, which consists of one 3-day session. The workshop dates will be scheduled in conjunction with the dates for the qualifying examinations. Information concerning the scheduled times, dates, and topics for each workshop may be obtained from the ~~executive secretary~~ office of the Board. Written notice of intent to attend any or all of the daily sessions must be ~~in the hands of the executive secretary~~ received by the Board at least thirty 10 working days prior to the starting date of each workshop.

(c) The Board shall have the right to refuse any person admission to the workshop sessions if the individual is not a registered apprentice or a registered applicant, or if timely notification of intent to attend was not made in accordance with Paragraph (b) of this Rule.

Statutory Authority G.S. 93D-3(c); 93D-5; 93D-9.

.0016 SEPARATION OF APPRENTICE AND SPONSOR

(a) In any case where a registered apprentice is separated from his sponsor for any reason the apprentice registration becomes invalid and the following procedures shall apply:

- (1) The apprentice shall return the original and all copies of his invalidated apprentice registration certificate, ~~along with his pocket identification card which was issued by the Board,~~ to the ~~executive secretary~~ office of the Board within ten working days after such separation;
- (2) The apprentice shall cease to fit and sell hearing aids until a new certificate is issued by the Board;
- (3) The sponsor shall notify the ~~executive secretary of the board,~~ Board, in writing, of any separation from his apprentice within ten working days after such separation; and
- (4) The sponsor shall assist the apprentice by return-

ing to the ~~executive secretary~~ office of the Board, within ten working days after such separation, the original and all copies of the apprentice's invalidated apprentice registration certificate that may be in the possession of the sponsor.

(b) Failure to abide by the procedures stated in this Rule may result in denial of any future applications for issuance of an apprentice registration certificate or a license, and may result in disciplinary action for the sponsor after proper notice and hearing.

Statutory Authority G.S. 93D-3(c); 93D-5; 93D-9.

.0018 CHANGE OF ADDRESS

It is the duty of all licensees, registered applicants, and registered apprentices to notify the ~~executive secretary of the~~ Board, within ten working days, of any change in the business name(s) or the street address(es), within the State of North Carolina, of their place(s) of business or proposed place(s) of business. Failure to do so may result in disciplinary action after proper notice and hearing.

Statutory Authority G.S. 93D-3(c); 93D-7; 93D-10.

.0020 CONTINUING EDUCATION

Each licensee shall be required to obtain a specified number of Continuing Education Units, on an annual basis, as a requirement for license renewal. The duty of obtaining information regarding the number of required continuing education program clock hours of credit or the topic content categories applicable for credit, and for obtaining the forms, issued by the Board, for requesting program approval and attendance verification is solely the responsibility of the licensee. Current requirements may be obtained from the ~~executive secretary~~ office of the Board and these requirements shall be reviewed annually by the Board.

Statutory Authority G.S. 93D-3(c); 93D-11.

.0021 REINSTATEMENT OF AN EXPIRED LICENSE

(a) For those applicants seeking reinstatement of a license that has been expired for more than 60 days but less than five years, the applicant may satisfy the Board's requirement for annual continuing education as a condition for license renewal by taking and passing the Board's qualifying examination.

(b) For those applicants seeking reinstatement of a license that has been expired for five or more years, evidence of satisfactory completion of the Board's annual continuing education requirement shall consist of the applicant taking and passing the Board's qualifying examination.

(c) If the applicant cited in Paragraph (b) of this Rule has continuously held a valid license to fit and sell hearing aids in another State or jurisdiction for the five consecutive years prior to seeking North Carolina license reinstatement, that

individual shall only be required to take and pass the portion of the Board's qualifying examination that addresses regulatory issues.

Statutory Authority G.S. 93D-3(c); 93D-11.

SUBCHAPTER 22I - PROFESSIONAL AFFAIRS

.0008 CALIBRATION CHECK FOR AUDIOMETERS

(a) All audiometers used in the fitting and selling of hearing aids shall have an annual calibration check and be recalibrated, if necessary, in accordance with the standards cited in Rule .0010 of this Subchapter.

(b) Whenever any individual applies for issuance or renewal of a license or an apprentice registration certificate, the Board shall require proof of audiometer calibration within the 12 consecutive months preceding such application. If any individual applying for annual renewal of a license provides the Board with an affidavit from the applicant that the applicant is not engaged in or being compensated for any activity requiring a North Carolina license to fit and sell hearing aids, the Board shall exempt the individual from this annual license renewal requirement for up to three consecutive renewal years. If granted this exemption, the individual shall not engage in or be compensated for any activity requiring a North Carolina license to fit and sell hearing aids until the individual has furnished the Board with proof of audiometer calibration occurring within the preceding 12 consecutive months.

Statutory Authority G.S. 93D-3(c).

.0009 APPROVAL OF CALIBRATORS

The Board shall not accept calibration records from any individual or calibration center unless such individual or center has been approved by the Board prior to calibration. Manufacturers of audiometers may calibrate without prior approval of the Board. A list of authorized individuals and centers, as well as the form used to apply to become an authorized calibrator, may be obtained from the ~~executive secretary~~ office of the Board.

Statutory Authority G.S. 93D-3(c).

SUBCHAPTER 22K - FORMS

.0004 APPLICATION FOR LICENSE RENEWAL

~~The forms listed in 21 NCAC 22K .0001 may be obtained from the executive secretary of the Board.~~ The Application for License Renewal form shall be used on each occasion that an individual is applying for renewal of an unexpired license.

Statutory Authority G.S. 93D-3(c); 150B-11(1).

.0005 ACCESS TO FORMS

The forms listed in 21 NCAC 22K .0001 may be obtained from the office of the Board.

Statutory Authority G.S. 93D-3(c).

SUBCHAPTER 22L - ADMINISTRATIVE HEARINGS: CONTESTED CASES

.0001 COMMITTEE ON INVESTIGATIONS

(a) Upon receipt of a written charge alleging misconduct against a licensee or registrant of the Board, the ~~Executive Secretary~~ Board shall inform the accused party in writing of the nature of the charges as filed with the Board.

(b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.

(c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.

(d) The charges as filed with the Board, the answer, and the reply ~~may~~ shall be referred to the Committee on Investigations (hereinafter referred to as "Committee"). The Committee shall consist of ~~two~~ three members of the Board, one of whom shall serve as chairman.

(e) Whenever the Board anonymously receives documentation of an advertisement which, at face value, appears to contain a violation of the Board's Statute or Rules, the advertisement shall be referred to the Committee for Investigation.

(f) ~~(e)~~ The Committee shall investigate the each complaint or advertisement referred to it by the Board and as part of the investigation may:

- (1) Assign the complaint to the Board's investigator who shall submit a written report to the Committee.
- (2) Invite the complaining party and the accused party before the Committee to present their oral statements, but neither party shall be compelled to attend.
- (3) Conduct any other type of investigation as is deemed appropriate by the Committee.

(g) ~~(f)~~ Upon the completion of the investigation, the Committee shall submit to the Board its findings and the Board shall determine whether or not there is probable cause to believe that the accused party has violated any standard of conduct which would justify a disciplinary hearing based upon the grounds as specified in G.S. 93D-13 or this Chapter. In the event the Committee is unable to reach a unanimous decision on whether probable cause exists, the President of the Board shall appoint one additional member to the Committee for the purpose of resolving the probable cause decision. This additional member is to serve on the Committee only for the duration of the particular investigation for which such member is appointed.

(h) ~~(g)~~ If probable cause is found, the ~~Committee or the Board's attorney shall serve~~ Board shall authorize a Notice of Hearing to be served on the licensee or registrant as required by law as stated in Article 3A of Chapter 150B of the North Carolina General Statutes.

(i) ~~(h)~~ If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the ~~Committee Board~~ may issue a reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 20 days after receipt of the reprimand, the accused party may refuse the reprimand and request that Notice of Hearing be issued pursuant to Chapter 150B of the North Carolina General Statutes or this Chapter. Such refusal and request shall be addressed to the Committee and filed with the ~~Executive~~ Secretary for the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing as necessary. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.

(j) ~~(i)~~ If no probable cause is found, the ~~Committee Board~~ shall dismiss the charges and direct the Committee to prepare a statement of the reasons therefor which shall be mailed to the accused party and the complaining party.

(k) ~~(j)~~ If no probable cause is found, but it is determined by the ~~Committee Board~~ that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the Board may direct the Committee may to issue a letter of caution to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the Board.

(l) ~~(k)~~ Any committee member member, including any board member who was appointed to the Committee pursuant to Paragraph (f) of this Rule, is deemed disqualified to participate further in the contested case in any disciplinary proceeding brought involving any person for whom the committee member participated in the investigatory process.

Statutory Authority G.S. 93D-3; 150B-38.

.0005 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 30 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the offices office of the Board to contact for further information or discussion; discussion; and
- ~~(2) the date, time, and place for a pre hearing conference, if any; and~~
- (2) (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) The Board shall give notice to all parties with a notice of hearing either personally or by certified mail or, if those methods are unavailable, in accordance with G.S. 1A-1, Rule 4(j1). In the event that notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of the service of notice.

(c) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or registration. Upon service of the order, the licensee or registrant to whom the order is directed shall immediately cease fitting and selling hearing aids in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

Statutory Authority G.S. 93D-3; 93D-13; 150B-3(c); 150B-38.

.0006 WHO SHALL HEAR CONTESTED CASES

~~All For all contested case hearings hearings, will be conducted by the full Board or by a panel consisting of at least a majority of the members of the Board. When required by Chapter 150B of the North Carolina Statutes the~~ Board shall apply to the Office of Administrative Hearings for the designation of an administrative law judge to hear the case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 93D-3; 150B-38; 150B-40.

.0009 INFORMAL PROCEDURES

(a) The administrative law judge, as presiding officer acting for the Board, Board may direct the parties to conduct an informal pre-hearing conference, or the parties may request such a conference, at a time and place selected by the parties. If the parties do not agree on the time and place of the pre-hearing conference within a reasonable time, the Board may set the time and place of the pre-hearing conference, giving reasonable written notice to all parties in the proceedings. ~~The Board may designate one or more persons from among its members, its attorneys, or its executive secretary to conduct the conference.~~

(b) At the discretion of the Board, all or part of the pre-hearing conference may be conducted by telephone or other electronic means, if each party has an opportunity to participate while the conference is taking place.

(c) The parties shall conduct the pre-hearing conference to deal with, where applicable:

- (1) exploring settlement possibilities;
- (2) formulating, clarifying, and simplifying the issues to be contested at the hearing;
- (3) preparing stipulations of facts or findings;
- (4) ruling on the identity and number of witnesses;
- (5) determining the extent to which direct evidence, rebuttal evidence, or cross-examination will be

presented in written form and the extent to which telephone, video tape, or other electronic means will be used as a substitute for proceedings in person;

- (6) determining what depositions, discovery orders, or subpoenas will be needed;
- (7) determining the need for consolidation of cases or joint hearing;
- (8) determining the order of presentation of evidence and cross-examination; and
- (9) considering any other matters which may promote the prompt, orderly, and efficient disposition of the case.

Statutory Authority G.S. 93D-3; 150B-38.

.0010 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a board member determines that personal bias or other factors render that member unable to ~~conduct the hearing and~~ perform all duties in an impartial manner, that board member shall voluntarily decline to participate in the ~~hearing or final~~ decision.

(b) Request for Disqualification. If for any reason any party in a contested case believes that a board member is personally biased or otherwise unable to ~~conduct the hearing and~~ perform all duties in an impartial manner, the party must make a written request that such board member be disqualified. The request must be accompanied by a sworn, notarized affidavit. The title of such affidavit must bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of Case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the board member.

(d) Timeliness of Affidavit. An affidavit of disqualification will be considered timely if filed ten calendar days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule.

(e) Procedure for Determining Disqualification:

- (1) The Board will appoint a board member to investigate the allegations of the affidavit.
- (2) The investigator will report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) A record of proceedings and the reasons for any decision reached will be maintained as part of the contested case record.

~~(6) When a board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.~~

~~(7) If disqualification of a board member leaves less than a majority of the Board, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).~~

(6) (8) Where a petition for disqualification is filed less than 10 days before or during the course of a hearing, the hearing shall continue. ~~continue with the challenged board member sitting.~~ Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in ~~further deliberation or decision of the case~~ the final decision.

Statutory Authority G.S. 93D-3; 150B-38; 150B-40.

.0011 FAILURE TO APPEAR

(a) Continuances and adjournments will be granted by the administrative law judge only upon a showing of good cause and upon the receipt of a timely-made request.

(b) Should a party fail to appear at a hearing or fail to appear following the granting of a continuance or adjournment, the hearing will be conducted in the party's absence.

(c) If a hearing is conducted and a decision is reached in an administrative hearing in the absence of a party, that party may file a written petition with the Board for a reopening of the case.

(d) Petitions for reopening a case will not be granted except when the petitioner can show that the reasons for his failure to appear were justifiable and unavoidable and that fairness requires reopening the case. Such petitions, however, will have no effect on the running of the 30-day period for seeking judicial review, which starts from the day the party is served with the final decision.

Statutory Authority G.S. 150B-38; 150B-40.

.0013 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to

the subpoena. The administrative law judge, as presiding officer acting for the Board, ~~Board~~ shall issue the requested subpoenas within five days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of ~~one of the members of the Board or the Board's executive secretary~~ the presiding officer; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h) After receipt of the objection and response thereto, if any, the ~~Board~~ administrative law judge shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, the ~~majority of the board members~~ administrative law judge hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Statutory Authority G.S. 93D-3; 150B-38; 150B-39.

.0014 FINAL DECISION

~~In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.~~

Statutory Authority G.S. 93D-3; 150B-38; 150B-39.

.0015 PROPOSALS FOR DECISIONS AND FINAL DECISION

(a) When an administrative law judge conducts the hearing, ~~a hearing pursuant to G.S. 150B-40(e)~~, a "proposal for decision" shall be rendered within 45 days after the hearing pursuant to the Rules of the Office of Administrative Hearings. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions must bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of Case).

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days after the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days after the next regularly scheduled Board meeting following receipt of the written exceptions.

Statutory Authority G.S. 93D-3; 150B-38; 150B-40.

CHAPTER 31 - MARITAL AND FAMILY THERAPY CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Marriage and Family Therapy Licensure Board intends to amend rules cited as 21 NCAC 31 .0102, .0104, .0201 - .0203, .0301 - .0303, .0401, .0501 - .0505; repeal 21 NCAC 31 .0402, .0601 - .0608; and adopt 21 NCAC 31 .0304, .0403 - .0404, .0506, .0609, .0701, .0801, .0901.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 11:00 a.m. on January 12, 1996 at the F. Roger Page Business & Technology Center, 1001 S. Marshall Street, Suite #5, Winston-Salem, NC 27101.

Reason for Proposed Action: Adopt, Amend, Repeal rules pursuant to Article 18C, Chapter 90 (90-270.45 through 90-270.62) of the North Carolina General Statutes.

Comment Procedures: Comments may be submitted in writing and addressed to: Edward Markowski, Ph.D., Chair, N.C. Marriage and Family Therapy Licensure Board, 1001 S. Marshall Street, Suite #5, Winston-Salem, NC 27101. Comments will be received until the public hearing date.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SECTION .0100 - GENERAL PROVISIONS

.0102 ADDRESS

The mailing address is 1001 South Marshall Street, Suite #5, Section on Marital and Family Therapy, Bowman Gray School of Medicine, Winston-Salem, North Carolina 27103-27101-5893.

Statutory Authority G.S. 90-270.45; 90-270.49; 90-270.51(b).

.0104 FEES

(a) In addition to the fees specified in Article 18C, Chapter 90 of the North Carolina General Statutes, an examination charge assessed by the Professional Examination Service will be collected from each applicant prior to sitting for the examination. ~~the following charges will be assessed for the indicated publications;~~

- (1) ~~two dollars and fifty cents (\$2.50) copy of the annual directory of certified marital and family therapists;~~
- (2) ~~eight dollars (\$8.00) a copy of the study manual for the North Carolina marital and family therapy certification examination.~~

(b) An applicant for the Marriage and Family Therapy

Associate designation provided under Rule .0507 will pay the license application fee at the time of initial application. Such person will not be subject to another application fee when documentation of having fulfilled the requirements to sit for the licensing examination is submitted.

Statutory Authority G.S. 12-3.1(c); 90-270.51(b).

SECTION .0200 - APPLICATION FOR LICENSING

.0201 CREDENTIALS REQUIRED

The credentials required for each applicant consist of:

- (1) notarized application form and application fee;
- (2) official graduate college transcripts sent directly to the Board by the training institution(s);
- (3) written evidence, transcript, or other document(s) evidencing satisfactory completion of a course of study in marital marriage and family therapy from an appropriate non-degree granting agency, institution, or program when applicable;
- (4) ~~three endorser statements from present or past employers or supervisors who can testify to the applicant's experience. Private practice individuals may include responsible members of the community who can provide verification of the applicant's practice.~~ Approved Supervisors Reports verifying clinical experience and supervision; and
- (5) Evidence of good moral character, which must include three endorsements for licensure from professionals in the community.

An application will automatically be placed in an inactive file if all necessary materials are not received within one year from the date of the application.

Statutory Authority G.S. 90-270.51(b); 90-270.52; 90-270.54(1)(2).

.0202 REVIEW PROCEDURE

(a) Copies of all materials pertaining to an applicant are mailed to each Board member prior to the scheduled meeting during which the application will be reviewed. Applications shall be reviewed by the Board at scheduled meetings special meetings called for such purpose by the Board Chair.

(b) If the credentials and application are approved, the applicant ~~is so~~ shall be so informed and is then given information regarding the examination.

(c) If the credentials or application are deemed unacceptable by the Board, the applicant ~~is~~ shall so be informed ~~and is given~~ an with an explanation of the areas which are considered deficient. Applicants may remedy deficiencies within one year from the date of notification of such without having to reapply.

(d) If during the review process, questions arise from ~~comments made by endorsers or other sources~~ any source which may pertain to the applicant's qualifications for ~~certification~~ licensing, the Board may seek to resolve the questions by communication with the person who made the comments or any other appropriate person(s), or may refer the matter to counsel or to a member or employee of the Board for investi-

gation.

(e) ~~If certification an application is denied, an explanation of the grounds on which the denial was made is given the grounds for denial shall be given to the applicant. The applicant may at this time present additional written evidence in support of the application to be considered by the Board. The applicant may request reconsideration of the application and present additional written material in support thereof. The Board shall not be required to reconsider its decision to deny an application, nor shall it be required to review any materials submitted in support of a request for reconsideration.~~

Statutory Authority G.S. 90-270.51(b).

.0203 ISSUANCE OF LICENSE

~~An applicant who has met all of the requirements for certification is issued a certificate. An applicant shall be granted a license when all requirements for licensing are met. This certificate displays the applicant's name, certification date, certification number, the signatures of the chairperson and vice chairperson, and the official seal of the Board. The license shall display the applicant's name, licensing date, license number, the signatures of at least the chairperson and vice-chairperson, and the official seal of the Board.~~

Statutory Authority G.S. 90-270.51(b)(d); 90-270.54.

SECTION .0300 - EXAMINATION

.0301 WRITTEN EXAMINATION

~~The Board employs an examination which includes questions to test an applicant's knowledge in the following areas:~~

- (1) ~~The North Carolina Marital and Family Therapy Certification Act;~~
- (2) ~~legal aspects of marriage, family and divorce;~~
- (3) ~~professional ethics in marital and family therapy;~~
- (4) ~~general family studies;~~
- (5) ~~individual development and personality;~~
- (6) ~~psychopathology;~~
- (7) ~~individual psychotherapy;~~
- (8) ~~marital and family therapy general;~~
- (9) ~~marital and family therapy specific approaches;~~
- (10) ~~sex and sex therapy;~~
- (11) ~~marriage and family skill training and enrichment; and~~
- (12) ~~general research issues.~~

~~The examination is given bi annually on selected dates in the spring and fall. A passing score will consist of correct responses on at least 70 percent of the questions.~~

(a) The Board shall employ a standardized national examination in Marriage and Family Therapy as approved by the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB).

(b) The examination shall be given biannually.

(c) The passing score on the examination is determined by the testing agency and the Board.

Statutory Authority G.S. 90-270.51(b); 90-270.55(a)(b)(c).

.0302 REPORTING OF SCORES

~~Each applicant for certification is informed in writing of his score on the marital and family therapy certification examination. Those who have not passed the examination are informed of the policy regarding re-examination.~~

The Board shall inform the applicant of their examination score. A passing score qualifies the applicant for licensure.

Those who have not passed the examination are referred to Rule .0303 of this Section.

Statutory Authority G.S. 90-20.51(b).

.0303 FIRST REEXAMINATION

~~An applicant who has not passed failed the written examination shall not be admitted to a subsequent examination for a period of at least six months. The applicant will shall not submit a new application form, but must shall update any information in the application that is no longer accurate and pay another examination fee.~~

Statutory Authority G.S. 90-270.51(b); 90-270.55(e).

.0304 SUBSEQUENT REEXAMINATIONS

An applicant who has failed any reexamination shall not be admitted to a subsequent examination for a period of at least six months. The applicant will also be required to submit an application fee with a new application form which will show evidence of an additional three semester hours of credit in marriage and family therapy course work and 50 additional hours of approved supervision. Upon approval by the board the applicant will be admitted to sit for the exam upon payment of the examination fee.

Statutory Authority G.S. 90-270.51(b); 90-270.55(e).

SECTION .0400 - RENEWAL

.0401 LICENSURE RENEWAL FORM

~~The form for renewal is headed Certification Renewal From with the year of the renewal and the amount of the fee. The form asks for current home and business addresses and telephone numbers. This form is mailed in the spring with renewal being on or before July 1.~~

(a) The Licensure Renewal Form shall include year of renewal, fee, the licensee's current home and business address and telephone numbers.

(b) Licenses not renewed by July 1 are expired.

(c) Copies of continuing education certificates shall be attached to the renewal form.

Statutory Authority G.S. 90-270.51(b); 90-270.58; 150B-11(1).

.0402 SECOND NOTICE

After the renewal date has passed, a second notice is sent to each delinquent individual. The Board may revoke certificates for individuals from whom renewal fees have not been received prior to July 1.

Statutory Authority G.S. 90-270.51(b); 90-270.58; 150B-3(b).

.0403 REINSTATEMENT AFTER EXPIRATION

(a) A license which expired for non payment of renewal fees or failure to comply with continuing education requirements will be reinstated, if within two years of expiration, the reinstatement fee is paid and satisfactory evidence of completing continuing education requirements is submitted. The continuing education requirements documented at the time of reinstatement must equal the hours required had the license not expired.

(b) A license which has expired for a period of more than two years will not be reinstated. A new license may be granted pursuant to paying the applicable fees and meeting the licensing requirements under Sections .0200 and .0300 of this Chapter.

Statutory Authority G.S. 90-270.51(b); 90-270.58A.

.0404 RETURN FROM INACTIVE STATUS

The Board will consider requests for a return to active status on an individual basis.

Statutory Authority G.S. 90-270.51(b); 90-270.58B.

SECTION .0500 - DEFINITIONS

.0501 APPROPRIATE COURSE OF STUDY

The phrase "appropriate course of study" for an applicant with a degree in an allied mental health field in G.S. 90-270.54(1)a is defined as one that includes is a graduate degree that includes specific content in general family studies, marital marriage and family therapy, individual studies including personality theory, and psychopathology, and a clinical practicum in marital marriage and family therapy.

Statutory Authority G.S. 90-270.51(b); 90-270.47(1)a-d; 90-270.54(1)a.

.0502 APPROVED SUPERVISION

(a) "Supervision approved by the Board" means supervision by a person who: "Approved Supervision" means supervision by a person who holds the designation "Approved Supervisor" or "Approved Supervisor in Training" according to standards established by the American Association for Marriage and Family Therapy (AAMFT).

(1) meets the educational and experience requirements for certification, has at least two additional years of experience in marital and family

therapy for a total of four years of clinical experience in marital and family therapy, and provides evidence of training in marital and family therapy supervision by one of the following:

- (A) academic coursework;
- (B) continuing education in marital and family therapy supervision;
- (C) designation by a national professional organization as a marital and family therapy supervisor.

(2) does not meet the educational and experience requirements for certification but as determined by the Board, has made significant contributions to the field of marital and family therapy and has substantial experience in supervising the clinical practice of marital and family therapy.

(b) The applicant is required to have accumulated 1,500 hours of direct supervised clinical experience in marital and family therapy. The applicant must obtain 200 hours of supervision approved by the Board over the course of the 1,500 hours of clinical experience.

(b) Applicants must demonstrate 200 hours of approved supervision during the 1,500 hours of clinical experience required by G.S. 90-270.54(1)b.

(c) Graduates of accredited marriage and family therapy programs shall complete a minimum of 25 hours of approved supervision following graduation.

Statutory Authority G.S. 90-270.51(b); 90-270.54(1)b.

.0503 EQUIVALENCY

An appropriate course of study for an "equivalent" degree under G.S. 90-270.47(1)e is defined by the Board to ordinarily consist of a 45-semester hour graduate program. Twenty-seven semester hours consist of the following content and clinical training:

- (1) General Family Studies (six semester hours). This category is viewed by the Board as being a broad and inclusive one which may include courses in marriage, family relations, child development, family sociology, or other such related topics in which the marital marriage and family content is clearly evident.
- (2) Marital Marriage and Family Therapy Theory (six semester hours). This category should include specific and extensive content in systems theory as well as other theoretical approaches to marital marriage and family therapy. In addition, the Board would consider course work in this category which exceeds six semester hours to be applicable toward meeting the requirements for category Item (1) of this Rule.
- (3) Individual Studies (six semester hours). Included in this category are theories of personality, psychopathology or abnormal behavior, and human sexuality. However, theories of personality and

- (4) psychopathology are seen as essential content. Clinical Practicum in Marital Marriage and Family Therapy (nine semester hours or 20 hours per week for 12 months).

The remaining 18 semester hours consist of core course work appropriate to the disciplinary specialty in which the degree is granted.

Statutory Authority G.S. 90-270.51(b); 90-270.47(1)e; 90-270.54(1)a.

.0504 ALTERNATIVE TO CLINICAL PRACTICUM

In lieu of the clinical practicum requirements under Rule .0501 or Rule .0503 of this Section, the Board will shall accept evidence of a supervised clinical practicum obtained subsequent to the granting of a degree in an otherwise appropriate course of study providing provided the supervision meets the requirements of "approved supervision" under Rule .0502 of this Section.

Statutory Authority G.S. 90-270.51(b).

.0505 NON-DEGREE GRANTING POST GRADUATE TRAINING PROGRAMS

(a) In assessing the applicant's fulfillment of the educational requirements for certification licensure, the Board will shall accept evidence of the applicant's completion of postgraduate training in marital marriage and family therapy from non-degree granting institutions or programs providing that:

- (1) The program has a specified curriculum in marital marriage and family therapy;
- (2) The program is ongoing and additive, i.e., offered at the same place over a specific period of time and is available on an ongoing basis;
- (3) The program is attached to an identifiable institution, training facility or agency; and
- (4) Documentation is available to the Board from maintained by the institution, training facility, or agency regarding a person's satisfactory involvement in and completion of the program. Such documentation must include approved clinical supervision and performance evaluation.

(b) Brief Workshops, seminars and general continuing education events do not qualify as postgraduate training under this Rule and will not be considered.

Statutory Authority G.S. 90-270.51(b); 90-270.54(1)a.

.0506 SUPERVISED CLINICAL EXPERIENCE

(a) "Supervised Clinical Experience" means hours of actual face-to-face marriage and family therapy contact with individuals, couples, and families.

(b) Group therapy with the exception of couple and family groups, case staffing, community and other collateral contact, agency meetings, and paperwork do not meet the

requirements for supervised clinical experience and cannot be counted toward the 1500 hours of clinical experience required for licensure.

Statutory Authority G.S. 90-270.51(b); 90-270.54(1)b.

SECTION .0600 - CODE OF ETHICAL PRINCIPLES

.0601 RESPONSIBILITY TO CLIENTS

~~North Carolina Certified Marital and Family Therapists are dedicated to advancing the welfare of families and individuals, including respecting the rights of those persons seeking their assistance, and making reasonable efforts to ensure that their services are used appropriately.~~

- ~~(1) North Carolina Certified Marital and Family Therapists do not discriminate against or refuse professional service to anyone on the basis of race, sex, religion, or national origin.~~
- ~~(2) North Carolina Certified Marital and Family Therapists do not use their professional relationship to further personal, religious, political, or business interests. Sexual intimacy with client is unethical.~~
- ~~(3) North Carolina Certified Marital and Family Therapists continue a therapeutic relationship only so long as it is reasonably clear that clients are benefitting from the relationship.~~
- ~~(4) North Carolina Certified Marital and Family Therapists make financial arrangements with clients that are consistent with normal and accepted professional practice and that are understandable to clients.~~
- ~~(5) North Carolina Certified Marital and Family Therapists respect the rights of clients to make decisions consistent with their age and other relevant conditions, while retaining responsibility for assessing the situation according to sound professional judgment with the clients. North Carolina Certified Marital and Family Therapists clearly advise a client that a decision on marital status is the responsibility of the client.~~
- ~~(6) North Carolina Certified Marital and Family Therapists are sensitive to and respectful of the rights of the other members of the client's family.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0602 COMPETENCE

~~North Carolina Certified Marital and Family Therapists are dedicated to maintaining high standards of competence, recognizing appropriate limitations to their competence and services and using consultation from other professionals.~~

- ~~(1) North Carolina Certified Marital and Family Therapists seek appropriate professional assistance for personal problems or conflicts that are likely to impair their work performance.~~

- (2) ~~North Carolina Certified Marital and Family Therapists, as teachers, are dedicated to maintaining high standards of scholarship and presenting information that is scholarly, up to date, and accurate.~~
- (3) ~~North Carolina Certified Marital and Family Therapists do not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0603 INTEGRITY

~~North Carolina Certified Marital and Family Therapists are honest in dealing with clients, students, trainees, colleagues, and the public, seeking to eliminate incompetence or dishonesty from the work or representations of marital and family therapists.~~

- (1) ~~North Carolina Certified Marital and Family Therapists do not claim, either directly or by implications, professional qualifications exceeding those actually attained.~~
- (2) ~~North Carolina Certified Marital and Family Therapists do not use false or misleading advertising.~~
- (3) ~~North Carolina Certified Marital and Family Therapists accept the responsibility to correct wherever possible misleading and inaccurate information and representations made by others concerning the marital and family therapist's qualifications, services, or products (e.g., books, testing materials).~~
- (4) ~~North Carolina Certified Marital and Family Therapists have the obligation to make certain that the qualifications of persons in their employ are appropriate to the services provided and are appropriately represented.~~
- (5) ~~North Carolina Certified Marital and Family Therapists neither offer nor accept payment for referrals.~~
- (6) ~~North Carolina Certified Marital and Family Therapists accept the responsibility for making informed corrective efforts with other marital and family therapists who are violating ethical principles or for bringing the violations to the attention of the North Carolina Marital and Family Therapy Certification Board.~~
- (7) ~~North Carolina Certified Marital and Family Therapists do not engage in sexual harassment in their working relationships with clients, students, trainees, or colleagues.~~
- (8) ~~North Carolina Certified Marital and Family Therapists do not use their relationships with students or trainees to further their own personal, religious, political, or business interests. Sexual intimacy with students or trainees is unethical.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0604 CONFIDENTIALITY

~~North Carolina Certified Marital and Family Therapists respect both the law and the rights of clients and safeguard client confidences as permitted by law.~~

- (1) ~~North Carolina Certified Marital and Family Therapists use clinical materials in teaching, writing, and public presentations only when permission has been obtained or when appropriate steps have been taken to protect client identity.~~
- (2) ~~North Carolina Certified Marital and Family Therapists store or dispose of client records in ways that enhance safety and confidentiality.~~
- (3) ~~North Carolina Certified Marital and Family Therapists communicate information about clients to others only after obtaining appropriate client consent unless there is a clear and immediate danger to an individual or to society, and then only to the concerned individual and appropriate family members, professional workers, or public authorities.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0605 PROFESSIONAL RESPONSIBILITY

~~North Carolina Certified Marital and Family Therapists respect the rights and responsibilities of professional colleagues and, as employees of organizations, remain accountable as individuals to the ethical principles of their profession.~~

- (1) ~~North Carolina Certified Marital and Family Therapists assign publication credit to those who have contributed to a publication in proportion to their contribution and in accordance with customary professional publication practices.~~
- (2) ~~North Carolina Certified Marital and Family Therapists who are the authors of books or other materials that are published or distributed cite appropriately persons to whom credit for original ideas is due.~~
- (3) ~~North Carolina Certified Marital and Family Therapists who are the authors of books or other materials published or distributed by an organization take reasonable precautions to ensure that the organization promotes and advertises the materials accurately and factually.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0606 PROFESSIONAL DEVELOPMENT

~~North Carolina Certified Marital and Family Therapists seek to continue their professional development and strive to make pertinent knowledge available to clients, students, trainees, colleagues and the public.~~

- (1) ~~North Carolina Certified Marital and Family Therapists seek to remain abreast of new develop-~~

~~ments in marital and family therapy knowledge and practice through both formal educational activities and informal learning experiences.~~

- ~~(2) North Carolina Certified Marital and Family Therapists who supervise or employ students, trainees, family therapists, or other professional assume a reasonable obligation to encourage and enhance the professional development of those persons.~~
- ~~(3) North Carolina Certified Marital and Family Therapists who provide supervision assume responsibility for defining the relationships as "supervisor supervisee" and for clearly defining and separating supervisory and therapeutic roles and relationships.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0607 RESEARCH RESPONSIBILITY

~~North Carolina Certified Marital and Family Therapists recognize that, while research is essential to the advancement of knowledge, all investigations must be conducted with full respect for the rights and dignity of participants and with full concern for their welfare.~~

- ~~(1) North Carolina Certified Marital and Family Therapists, as researchers, strive to be adequately informed of relevant laws and other regulations regarding the conduct of research with human participants and to abide by those laws and regulations.~~
- ~~(2) North Carolina Certified Marital and Family Therapists, as researchers, assume responsibility for ensuring that their research is conducted in an ethical manner.~~

Statutory Authority G.S. 90-20.51(b); 90-270.60(5).

.0608 SOCIAL RESPONSIBILITY

~~North Carolina Certified Marital and Family Therapists acknowledge a responsibility to participate in activities that contribute to a better community and society, including devoting a portion of their professional activity to services for which there is little or no financial return.~~

- ~~(1) North Carolina Certified Marital and Family Therapists are concerned with developing laws and legal regulations pertaining to marital and family therapy that serve the public interest and with altering such laws and regulations that are not in the public interest.~~
- ~~(2) North Carolina Certified Marital and Family Therapists affirm that professional services involve both practitioner and client and seek to encourage public participation in the designing and delivery of services and in the regulation of practitioners.~~

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

.0609 ETHICAL PRINCIPLES

(a) The board adopts the code of ethical principles of the American Association for Marriage and Family Therapy (AAMFT) published as the AAMFT CODE OF ETHICAL PRINCIPLES FOR MARRIAGE AND FAMILY THERAPISTS of August 1991, or its successor publication.

(b) Each applicant, associate, or licensee is responsible for being familiar with and following this code of ethics.

(c) A copy of this code of ethics may be obtained by writing the American Association for Marriage and Family Therapy, 1717 K Street, N.W., Suite 407, Washington, D.C. 20006.

Statutory Authority G.S. 90-270.51(b); 90-270.60(5).

SECTION .0700 - CONTINUING EDUCATION

.0701 REQUIREMENTS FOR CONTINUING EDUCATION

(a) Licensed Marriage and Family Therapists shall submit each year with the license renewal forms evidence of 12 hours of continuing education credits in marriage and family therapy continuing education obtained subsequent to the prior license renewal. Evidence of completion shall consist of a certificate of attendance and completion signed by the responsible officer of a continuing education provider.

(b) The board does not preapprove continuing education programs.

(c) Only continuing education units that by title and content clearly deal with marriage and family therapeutic issues will be accepted by the board.

(d) Continuing Education credit will not be accepted for the following:

- (1) Regular work activities, administrative staff meetings, case staffing/reporting, etc.;
- (2) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches;
- (3) Independent unstructured or self-structured learning;
- (4) Training specifically related to policies and procedures of an agency;
- (5) Non-therapy content programs such as finance or business management.

(e) If a person submits documentation for continuing education that is not clearly identifiable as dealing with marriage and family therapy, the board shall request a written description of the continuing education and how it applies to professional practice in marriage and family therapy. If the board determines that the training cannot be considered appropriate, the individual will be given 90 days to replace the hours not allowed. Those hours will be considered replacement hours and cannot be counted during the next renewal period.

(f) When evidence of satisfactory completion of marriage and family continuing education is not presented to the

Board within 90 days, the license will expire automatically.

Statutory Authority G.S. 90-270.51(b); 90-270-58C.

SECTION .0800 - ASSOCIATE STATUS

.0801 MARRIAGE AND FAMILY THERAPY ASSOCIATE

(a) The designation marriage and family therapy Associate shall be granted to persons preparing for the practice of marriage and family therapy who:

- (1) have completed a marriage and family therapy degree or equivalent in an allied mental health field;
- (2) show evidence of intent to accrue the required clinical contact hours for licensing under approved supervision;
- (3) have filed a Marriage and Family Therapy Associate application form with the Board, which shall include evidence of appropriate course work and the agreement of at least one Approved Supervisor to provide supervision.

(b) Upon approval by the Board a certificate designating the applicant as a Marriage and Family Therapy Associate will be issued and be valid for three years from the date of issue.

(c) Upon petition to the Board and with demonstration of special circumstances and steady progress toward licensure the Board may grant a one year extension of the Associate designation.

(d) Persons holding the Associate designation may in no way identify themselves as or imply that they are licensed marriage and family therapists.

Statutory Authority G.S. 90-270.51(b); 90-270.48A(1).

SECTION .0900 - RECIPROCITY

.0901 RECIPROCAL LICENSE

A reciprocal license will be granted under G.S. 90-270.56 when there is a written agreement between the North Carolina Board and the Board regulating Marriage and Family Therapy in the State in which the applicant holds a valid license.

Statutory Authority G.S. 90-270.51(b); 90-270.56.

CHAPTER 36 - BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to adopt rule cited as 21 NCAC 36 .0228.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 1:00 p.m. on December 15, 1995 at the NC Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

Reason for Proposed Action: *To establish the qualifications for a registered nurse to be recognized as a clinical nurse specialist and define the scope of advanced nursing activities that may be performed by the registered nurse who meets these qualifications.*

Comment Procedures: *Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning this adoption must be submitted by December 15, 1995, to: North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, ATTN: Jean H. Stanley, APA Coordinator.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

SECTION .0200 - LICENSURE

.0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) The registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist or a clinical nurse specialist applicant and perform activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) Qualifications:

- (1) The registered nurse who has completed a graduate degree in a clinical nursing specialty and currently holds certification in a clinical specialty from a national credentialing body approved by the Board may be recognized as a clinical nurse specialist; or
- (2) The registered nurse who holds a graduate degree in a related field and who was initially certified by the American Nurses Credentialing Center as a Specialist prior to June 1992 and who has maintained such certification will be considered by the Board for recognition as a clinical nurse specialist; or
- (3) The registered nurse who has completed a graduate degree in a clinical nursing specialty and who is awaiting initial certification by a national credentialing body approved by the Board may be recognized by the Board as a clinical nurse specialist applicant for a period not to exceed 24 months after completion of the graduate program.

(c) Clinical nurse specialist practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level which includes but is not limited to:

- (1) assessing clients' health status, synthesizing and

analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;

- (2) diagnosing, treating and managing clients' acute and chronic health problems and formulating strategies to promote wellness and prevent illness;
- (3) prescribing and implementing therapeutic and corrective measures;
- (4) making independent decisions in managing complex client health care problems;
- (5) planning for situations beyond expertise, and consulting with or referring clients to other health care providers as appropriate;
- (6) promoting collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health environment;
- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify practice decisions;
- (8) assuming leadership for the application of research findings; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist or clinical nurse specialist applicant shall:

- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate graduate degree as defined in Subparagraph (b)(1), (2) or (3) of this Rule; and
 - (B) evidence of current certification in a clinical specialty from a national credentialing body approved by the Board as defined in Subparagraphs (b)(1) and (2) of this Rule;
- (2) submit an administrative fee for processing the application; and
- (3) submit evidence of renewal or initial certification at the time such occurs in order to maintain Board recognition consistent with Paragraph (b) of this Rule.

Statutory Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.42(b).

CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners for Nursing Home Administrators intends to amend rules cited as 21 NCAC 37C .0101 - .0103, 37D

.0201 - .0203, .0402 - .0406, .0408 - .0412, .0501 - .0503, .0605; 37E .0101 - .0102; 37F .0101 - .0102; 37G .0101 - .0102, .0201 - .0202, .0301, .0401, 37H .0102 - .0103; 37I .0101; repeal 21 NCAC 37A .0101, .0108, .0110, .0208, .0211, .0306, .0308, .0506, .0603 - .0604, .0702 - .0707, .0805, .0901, .0905, .0907 and adopt 21 NCAC 37B .0101 - .0103, .0201, .0203, .0205; 37D .0101 - .0102, .0301 - .0303, .0601 - .0603, .0701 - .0703; 37H .0101, and .0104.

Proposed Effective Date: April 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on January 31, 1996 at 3700 National Drive, Room 104, Raleigh, NC 27612.

Reason for Proposed Action: These Rules are being recodified in new subchapters in a more organized manner. Those Rules proposed to be amended and adopted better clarify Board requirements and operating procedures in the areas of application, examination, Administrator-in-Training program, continuing education, licensing and reciprocity. Those rules proposed to be repealed are unnecessary or duplicative of information contained in the law or in other rules in this Chapter.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing. Written comments may be delivered to the Board office through January 30, 1996 and must state the Rules to which the comments are addressed. Anyone planning to attend the hearing should notify the Board office by January 15, 1996 whether they wish to speak on the proposals. Speakers will be limited to 5 minutes.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SUBCHAPTER 37A - BOARD OF NURSING HOME ADMINISTRATORS

SECTION .0100 - GENERAL PROVISIONS

.0101 COPIES OF RULES

Copies of the Rules in this Chapter may be obtained from the Office of Administrative Hearings, Raleigh, N.C., at a cost as set out in 26 NCAC 1 .0103. The Board will provide one free copy to each licensed administrator.

Statutory Authority G.S. 90-285.

.0108 RELATED HEALTH CARE ADMINISTRATION

"Related health care administration" is defined as administration practiced in one or more health related institutions such as a hospital, nursing home, or domiciliary care facility as licensed by the Division of Facility Services, Department

~~of Human Resources.~~

Statutory Authority G.S. 90-285.

.0110 REFUSAL

"Refusal" means the denial of a license by the Board to an individual who fails to meet the qualifications stated in the Rules found in this Chapter and in G.S. 90-285.1.

Statutory Authority G.S. 90-285; 90-285.1.

SECTION .0200 - PREREQUISITES TO LICENSURE

.0208 EXAMINATIONS

The applicant must successfully complete such examinations as required by the Board in accordance with the provisions as outlined in Section .0600 of these Rules.

Statutory Authority G.S. 90-278; 90-280.

.0211 ORAL INTERVIEW

An applicant must appear before the Board for a personal interview as required by the Board in accordance with the provisions as outlined in Sections .0500 and .0900 of this Chapter.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0300 - APPLICATION FOR LICENSE

.0306 PHOTOGRAPH

The applicant shall attach to his application a finished unmounted photograph of himself which shall not be less than two and one half inches nor more than three inches square, which photograph shall have been taken within three months prior to the date of such application.

Statutory Authority G.S. 90-278; 90-285.

.0308 RECEIPT OF APPLICATIONS

All applications for licensure must be received in the Board's office a minimum of three weeks prior to the meeting of the Board at which the application is to be considered. All items required to be provided to constitute a full application must be received by this date.

Statutory Authority G.S. 90-285.

SECTION .0500 - ADMINISTRATOR-IN-TRAINING

.0506 GOVERNING BOARD OR OWNERSHIP RESPONSIBILITIES

Before a preceptor accepts an AIT the governing Board or owner of the preceptor's facility must submit to the Board a written statement that the facility may be utilized as a training site.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0600 - EXAMINATION

.0603 EXAMINATION

(a) ~~There shall be a charge of two hundred dollars (\$200.00) to take the national examination and seventy five dollars (\$75.00) to take the state examination.~~

(b) ~~If the applicant does not pass the examination, no refund will be made.~~

(c) ~~The applicant will be required to pay the appropriate fee each time he takes the examination.~~

(d) ~~Upon the third failure of any examination required by the Board, the AIT and the preceptor must submit to the Board a program to strengthen the candidate's weakness as demonstrated by the previous test results. Upon approval by the Board of the program and completion thereof by the candidate, he shall be allowed to take the examinations.~~

Statutory Authority G.S. 90-278; 90-280; 90-284; 90-285.

.0604 EXAMINATIONS RETAINED

The applicant's examination, together with a record stating in detail the result of the examination for each candidate, shall be kept by the Board for a period of ten years.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0700 - SUBJECTS FOR EXAMINATION

.0702 GUIDELINES FOR RULE .0701(1)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(1) of this Section, resident care management:

- (1) ~~Nursing services,~~
- (2) ~~Social services,~~
- (3) ~~Food services,~~
- (4) ~~Physician services,~~
- (5) ~~Social and therapeutic recreational activities,~~
- (6) ~~Medical records,~~
- (7) ~~Pharmaceutical services,~~
- (8) ~~Rehabilitation services.~~

Statutory Authority G.S. 90-278; 90-285.

.0703 GUIDELINES FOR RULE .0701(2)

The following shall be considered as guidelines with respect to the subject area of Rule .0701(2) of this Section, personnel management:

- (1) ~~Maintaining positive atmosphere,~~
- (2) ~~Evaluation procedures,~~
- (3) ~~Recruitment of staff,~~
- (4) ~~Interviewing candidates,~~
- (5) ~~Selecting future employees,~~
- (6) ~~Providing staff development and training activities,~~
- (7) ~~Personnel policies,~~
- (8) ~~Health and safety.~~

Statutory Authority G.S. 90-278; 90-285.

.0704 GUIDELINES FOR RULE .0701(3)

~~The following shall be considered as guidelines with respect to the subject area of Rule .0701(3) of this Section, financial management:~~

- ~~(1) Budgeting,~~
- ~~(2) Financial planning,~~
- ~~(3) Asset management,~~
- ~~(4) Accounting.~~

Statutory Authority G.S. 90-278; 90-285.

.0705 GUIDELINES FOR RULE .0701(4)

~~The following shall be considered as guidelines with respect to the subject area of Rule .0701(4) of this Section, environmental management:~~

- ~~(1) Maintain and improve buildings, grounds and equipment,~~
- ~~(2) Provide a clean, attractive, homelike environment for residents, staff and visitors,~~
- ~~(3) Safety program which would ensure the health, welfare and safety of residents, staff and visitors,~~
- ~~(4) Have fire, disaster and emergency programs to protect the safety and welfare of residents, staff and property.~~

Statutory Authority G.S. 90-278; 90-285.

.0706 GUIDELINES FOR RULE .0701(5)

~~The following shall be considered as guidelines with respect to the subject area of Rule .0701(5) of this Section, regulatory management:~~

- ~~(1) Policies and procedures in place to maintain compliance with laws and regulations,~~
- ~~(2) Policies and procedures in place to maintain compliance with directives of governing entities (ie. Board of Directors).~~

Statutory Authority G.S. 90-278; 90-285.

.0707 GUIDELINES FOR RULE .0701(6)

~~The following shall be considered as guidelines with respect to the subject area of Rule .0701(6) of this Section, organizational management:~~

- ~~(1) Measure outcomes of all programs, policies, and procedures of facility to ensure effectiveness,~~
- ~~(2) Process for communicating with residents, families, staff, volunteers and governing entities.~~

Statutory Authority G.S. 90-278; 90-285.

SECTION .0800 - GRADING EXAMINATIONS

.0805 GRADING OF ORAL EXAMINATION

~~When an oral examination is used for a handicapped applicant, totally or as part of the examination process, the~~

~~Board, or the examiners designated for such purpose, shall use as a basis for such oral examination a written prepared outline of subject matter based upon or similar to the requirements of Rule .0701 of this Chapter. The Board shall designate weighted values to the subject matter for such oral examination.~~

Statutory Authority G.S. 90-285.

SECTION .0900 - LICENSES

.0901 ISSUANCE

~~Every person who is issued a license by the Board shall immediately upon issuance thereof be deemed registered with the Board and be issued a certificate of registration. A licensee must notify the Board in writing within 15 days of any change of address (home and work).~~

Statutory Authority G.S. 90-278; 90-279; 90-285;

.0905 RENEWAL CERTIFICATE

~~Upon receipt of such application for renewal and the licensure fee, the Board shall issue a certificate of registration to such nursing home administrator.~~

Statutory Authority G.S. 90-285; 90-286.

.0907 TITLE

~~(a) Only an individual who is licensed as a nursing home administrator shall have the right of using the title nursing home administrator and have the right of using the abbreviation "N.H.A." after his name.~~

~~(b) No other person may use or be designated by this title or abbreviation or any other words or letters intended to indicate that such person is a licensed nursing home administrator.~~

Statutory Authority G.S. 90-285; 90-288.

SECTION .1200 - RULEMAKING AND DECLARATORY RULINGS

.1203 TEMPORARY RULES

~~The power of the Board to adopt temporary rules and the procedure by which such rules are put into effect are governed by G.S. 150B-13.~~

Statutory Authority G.S. 90-285; 150B-13.

SUBCHAPTER 37B - DEPARTMENTAL RULES

SECTION .0100 - GENERAL PROVISIONS

.0101 AUTHORITY: NAME & LOCATION OF BOARD

The "North Carolina State Board of Examiners for Nursing Home Administrators," subsequently herein

referred to as the "Board" is established and authorized by G.S. 90, Article 20. The Board's physical location and mailing address is: 3733 National Drive, Suite 228, Raleigh, North Carolina 27612.

Statutory Authority G.S. 90-277.

.0102 ELECTION OF OFFICERS

The Board shall, at the first meeting subsequent to January 1 of each year, elect a chairperson, vice-chairperson and secretary. Vacancies in the officers' terms, occurring from death, resignation, disability or expiration of Board service, shall be filled by election at the next Board meeting following the vacancy.

Statutory Authority G.S. 90-283.

.0103 LICENSED ADMINISTRATOR REQUIRED

Only nursing homes supervised by an administrator licensed in accordance with the requirements of G.S. 90, Article 20 and these Rules may operate in this state.

Authority G.S. 90-276; 90-284; 90-285; 90-288; 42 C.F.R. 431.701; 42 C.F.R. 431.703.

SECTION .0200 - DEFINITIONS

.0201 ADMINISTRATOR OF RECORD

"Administrator of Record" means one who is responsible for the day to day operations of a nursing home facility and who is physically present in the facility 35 hours per week, subject only to the limited exceptions provided by state and federal laws and regulation and North Carolina Division of Facility Services Rules.

Statutory Authority G.S. 90-285.

~~.0909~~ .0202 LICENSE

.0203 NATIONAL EXAM

The term "National Exam" as used in these Rules means the examination provided by the National Association of Boards of Examiners for Nursing Home Administrators.

Statutory Authority G.S. 90-278.

~~.0105~~ .0204 PRACTICE OF NURSING HOME ADMINISTRATION

.0205 STATE EXAM

The term "State Exam" as used in these Rules means the examination provided by this Board regarding state laws and rules.

Statutory Authority G.S. 90-278.

SUBCHAPTER 37C - RULEMAKING AND

DECLARATORY RULINGS

SECTION .0100 - ADOPTION OF RULES

~~.1201~~ .0101 PETITIONS FOR ADOPTION OF RULES

(a) General. The procedure for petitioning the Board to adopt, amend, or repeal a rule is governed by G.S. ~~450B-16~~ 150B-20.

(b) Submission. Rule-making petitions shall be sent to the Board Executive Director. No special form is required, but the petitioner shall state his name and address. There are no minimum mandatory contents of a petition, but the Board considers the following information to be pertinent:

- (1) a draft of the proposed rule;
- (2) the reason for its proposal;
- (3) the effect of the proposed rule on existing rules or decisions;
- (4) data supporting the proposed rule;
- (5) practices likely to be affected by the proposed rule;
- (6) persons likely to be affected by the proposed rule.

(c) Disposition. The Board Executive Director shall review the petition and develop a recommendation as to whether the petitioner's proposed rule should be rejected or implemented. The Board Executive Director shall present the petition and his recommendation to the Board at its next regular meeting following receipt of the petition, and the Board shall render its decision to either deny the petition or initiate rule-making. The Board shall notify the petitioner of its decision in writing within the ~~120-day~~ period set by G.S. ~~450B-16~~ 150B-20.

Statutory Authority G.S. 90-285; 150B-20.

~~.1302~~ .0102 PROCEDURE FOR ADOPTION OF RULES

(a) General. The procedure for the adoption, amendment or repeal of rules is governed by G.S. ~~450B-12~~ 150B-21.2.

(b) Notice of Rule-making. Notice of rule-making ~~will~~ shall be published in the North Carolina Register. Any person who wishes to receive individual notice shall file a written request with the Board Executive Director and shall be responsible for the cost of mailing said notice.

(c) Public Hearing. Any public rule-making hearing required by G.S. ~~450B-12~~ 150B-21.2 shall be conducted by the Chairman of the Board or by any person he may designate. The presiding officer shall have complete control of the hearing and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data, and comments:

- (1) oral presentations shall not exceed 15 minutes unless the presiding officer, in his discretion, prescribes a greater time limit.
- (2) written presentations shall be submitted prior to or during a rule-making hearing and shall be

acknowledged by the presiding officer and shall be given the same consideration as oral presentations.

Statutory Authority G.S. 90-285; 150B-21.2.

.1204 .0103 DECLARATORY RULINGS

(a) General. The issuance of declaratory rulings by the Board is governed by G.S. ~~150B-17~~ 150B-4.

(b) Request And Contents. A request for a declaratory ruling shall be in writing and addressed to the ~~Board~~ Executive Director. The request shall contain the following information:

- (1) the name and address of the person making the request;
- (2) the statute or rule to which the request relates;
- (3) a concise statement of the manner in which the person has been aggrieved by the statute or rule;
- (4) a statement as to whether a hearing is desired and, if desired, the reason therefor.

(c) Refusal To Issue Ruling. The Board shall ordinarily refuse to issue a declaratory ruling under the following circumstances:

- (1) when the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) when the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question; or
- (3) when the subject matter of the request is involved in pending litigation in North Carolina.

Statutory Authority G.S. 150B-4.

SUBCHAPTER 37D - NEW LICENSES

SECTION .0100 - GENERAL

.0101 OVERVIEW

The Board issues new licenses, reciprocal licenses and temporary licenses. All applicants shall comply with the application requirements set out in Section .0200 of this Subchapter. New license applicants shall successfully complete an AIT program pursuant to Section .0400 of this Subchapter, successfully complete the AIT course pursuant to Section .0300 of this Subchapter, pass the national exam pursuant to Section .0600 of this Subchapter and pass the state exam pursuant to Section .0700 of this Subchapter. Reciprocal license applicants shall provide proof that that original license from another jurisdiction substantially meets the applicable North Carolina licensure requirements and shall pass the national and state exams. Temporary licenses shall be issued pursuant to 21 NCAC 37F .0100.

Statutory Authority G.S. 90-279; 90-287.

.0102 STEPS FOR NEW LICENSE APPLICANTS

New license applicants shall:

- (1) Meet educational and experience requirements as set out in 21 NCAC 37D .0300 generally;
- (2) Apply for and successfully complete the AIT program pursuant to 21 NCAC 37D .0400;
- (3) Apply for and successfully complete the required course pursuant to 21 NCAC 37D .0303;
- (4) Apply for and successfully complete the national exam pursuant to 21 NCAC 37D .0600;
- (5) Apply for and successfully complete the state exam pursuant to 21 NCAC 37D .0700;
- (6) Apply for licensure pursuant to 21 NCAC 37D .0200.

Statutory Authority G.S. 90-285.

SECTION .0200 - APPLICATION FOR LICENSE

.0301 .0201 APPLICATION PACKAGE

(a) ~~An applicant for examination and qualification for a license shall make request, in writing, an application package addressed to on a form obtained by writing: N.C. State Board of Examiners for Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, North Carolina 27612, the Board. The request shall be accompanied by an initial application fee of \$25.00 which shall be credited to the total application fee.~~

~~(b) The form shall include the applicant's name, employment experience, educational qualifications, questions pertaining to moral character, and any other information that the Board requires to be in the application.~~

(b) All applications shall be received in the Board's office a minimum of three weeks prior to the meeting of the Board at which the application is to be considered. All items required to be provided to constitute a full application shall be received by this date.

Statutory Authority G.S. 90-278; 90-285.

.0302 .0202 INITIAL LICENSURE FEE

The applicant ~~will~~ shall send to the Board, prior to licensure, an initial licensure fee of ~~two hundred fifty dollars (\$250.00) three hundred dollars (\$300.00)~~ when applicant has successfully passed the examinations as required by the Board under ~~Rule .0208~~ 37D, Sections .0600 and .0700 of this Chapter.

Statutory Authority G.S. 90-280.

.0303 .0203 REFERENCES

A candidate for licensure shall submit with his application three reference forms (one of which ~~must~~ shall be from an ~~previous~~ employer) from individuals not related to the candidate who shall certify to the good moral character of the applicant. It shall be prima facie evidence of good moral character if a candidate has not violated any standards stated in G.S. 90-285.1.

Statutory Authority G.S. 90-278; 90-285.

**.0304 .0204 FELONIES AND/OR
MISDEMEANORS**

**SECTION .0300 - EDUCATION,
EXPERIENCE AND REQUIRED COURSE**

.0301 EDUCATION

To be eligible for the national and state exams and for licensure, an applicant shall have either a minimum of two years credit from an accredited college as described in G.S. 90-278(b) or have a combination of education and experience approved by the Board pursuant to 21 NCAC 37D .0302. All education credit shall be documented by an official originally sealed college transcript.

Statutory Authority G.S. 90-278.

**.0302 COMBINATION OF EDUCATION
AND EXPERIENCE**

A combination of education and experience shall comply with the following requirements:

- (1) A minimum of one year of college credit from an accredited institution with a cumulative average of at least a 2.0 grade point average on a 4.0 point scale.
- (2) Supervisory experience may be substitute for up to one year of education at the rate of two years experience for one year of education credit. Supervisory experience for purposes of this section means having continuous, direct management responsibility, including some responsibility for hiring and firing, over the equivalent of at least one full-time employee. Such supervisory experience shall have been in a nursing home within the five years preceding the date of application.

Statutory Authority G.S. 90-278.

.0303 REQUIRED COURSE

The course prescribed by the Board pursuant to G.S. 90-278(c) shall be comprised of in-class, field and correspondence components included in the current description of the Basic Nursing Home Administrator Course provided by the School of Public Health at UNC-Chapel Hill or its substantial equivalent as approved by the Board.

Statutory Authority G.S. 90-278.

SECTION .0400 - ADMINISTRATOR-IN-TRAINING

.0501 .0401 TRAINING REQUIREMENT

**.0502 .0402 APPLICATION TO BECOME
ADMINISTRATOR-IN-TRAINING**

- (a) The applicant shall submit to the Board an application,

which shall contain such information as name, education, employment history, questions pertaining to moral character, and any other information the Board may require to process an application according to these Rules, and an affidavit stating that the applicant, if granted a license, shall obey the laws of the state and the rules of the Board, and shall maintain the honor and dignity of the profession.

(b) The applicant shall submit a background resume indicating the areas in which he is competent or lacking.

(c) The applicant shall submit three reference forms (one of which shall be from an employer) from individuals not related to the applicant which shall certify to his or her good moral character as required and defined by Rule ~~.0303~~ .0203 of this ~~Chapter~~ Subchapter.

(d) The applicant shall supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. Instead of a transcript the applicant shall supply documentation of his supervisory experience in a nursing home if he is utilizing the experience substitute for the education requirement as allowed by General Statute 90-278(1)b.

(e) The applicant shall appear before the Board for a personal interview.

~~(f)(e)~~ The preceptor shall submit to the Board three weeks prior to the personal interview: ~~a recommended number of weeks and an individualized curriculum for the AIT program that shall provide the AIT with on the job experience in the six subject areas outlined in Section .0700 of this Chapter.~~

- (1) Facility Survey Form;
- (2) Letter accepting individual as an AIT;
- (3) An individualized curriculum for the AIT program that provides the AIT with on the job experience in the subject areas as outlined in Section .0700 of this Chapter, including the recommended number of weeks in the program;
- (4) Map to facility and/or directions.

(g) The owner of the facility or governing board shall submit to the Board three weeks prior to the personal interview, a letter of approval for the AIT applicant to train in their facility.

~~(h)(f)~~ A fee of one hundred fifty dollars (\$150.00) shall be submitted with the application.

~~(i)(g)~~ An AIT applicant ~~must~~ shall maintain at all times a current residence mailing address with the Board office.

Statutory Authority G.S. 90-278; 90-280; 90-285.

.0504 .0403 TRAINING PERMIT

(a) After the interview and approval, and upon notification from the preceptor of the starting date of the AIT program, the Board shall issue an AIT training permit to the applicant for a maximum one-year period beginning on the date the permit is issued.

(b) Should the AIT not maintain acceptable standards and submit the required reports, the Board may place the AIT on probation or may rescind the AIT training permit.

Statutory Authority G.S. 90-278; 90-285.

**.0505 .0404 ADMINISTRATOR-IN-TRAINING
SELECTION**

(a) From an approved list of preceptors, the AIT applicant shall select a preceptor of his choice prior to submitting application to the Board.

(b) It shall be the responsibility of the AIT applicant to contact a preceptor to determine if the preceptor shall accept the AIT applicant.

~~(e) Once a preceptor accepts an AIT applicant, the preceptor must submit to the Board a written statement that he or she is willing to serve as a preceptor.~~

~~(d) The preceptor shall notify the Board of the starting date of the AIT program and the date of any discontinuance.~~

~~(c)(e)~~ Any change in preceptor ~~must~~ shall be approved by the Board.

Statutory Authority G.S. 90-278; 90-285.

**.0519 .0405 ADMINISTRATOR-IN-TRAINING
PROGRAM**

(a) The preceptor ~~will~~ shall evaluate and recommend to the Board the length of the AIT program required to teach the core of knowledge as outlined in ~~Section .0700 21 NCAC 37D .0605 of these Rules~~ before accepting the AIT to train in a facility approved by the Board subject to the following provisions:

- (1) in determining the length of the AIT program, the preceptor shall consider the strengths and weaknesses of the AIT applicant as it relates to his/her education and past supervisory experience. (An inventory sheet ~~will~~ shall be provided to help the preceptor determine the knowledge of the AIT applicant.);
- (2) the AIT program ~~will~~ shall be presented to the Board by the preceptor and the AIT during the personal interview as required under Rule ~~.0502(e) .0405(e)~~ of this Section; and
- (3) except as otherwise allowed under Rule ~~.0520 .0412~~ of this Section, all AITs shall serve a minimum of 12 weeks in the AIT program, plus any additional weeks as determined by the Board. In determining whether to require additional weeks in addition to the 12 week minimum, the Board shall consider the recommendation of the preceptor, and the Board's independent consideration of the AIT applicant's education, training and experience relevant to operating a health care facility.

(b) An AIT applicant who is working toward or has completed a baccalaureate or masters degree in nursing home administration or a related health care administration field shall serve a minimum of 12 weeks in the AIT program as part of his/her educational curriculum in a North Carolina licensed nursing home under the supervision of an approved preceptor.

~~(c) An AIT shall complete a basic Nursing Home Administrator course approved by the Board within two years preceding an application for licensure.~~

~~(d)(e)~~ At the completion of the approved AIT program and upon successfully passing the examinations as required by the Board, the AIT ~~will~~ shall be issued a license.

~~(d) All persons who hold a valid provisional license or who have completed the requirements for a provisional license as of the amended effective date of this Rule shall be issued a full license upon submission (within 12 months from the effective date of this Rule) to the Board their provisional license or payment of the licensing fee if applicable.~~

Statutory Authority G.S. 90-278; 90-285.

.0510 .0406 AIT REPORTS

(a) At the conclusion of each month, the AIT shall submit to the Board a report on an evaluation of his progress on a form provided by the Board for that purpose. ~~The exception to this requirement will be~~ Provided, however, an AIT approved for a program of ~~20 weeks or less than 20 weeks~~ in length, ~~who will~~ shall submit weekly reports.

(b) The report form requires the name of the AIT, a statement of the subject areas covered that week or month, the number of hours the AIT has completed that week or month, comments from the preceptor concerning the progress of the AIT's training, a description of the administrative activities in which the AIT has participated, suggestions for improvement in the program, and other information that the Board requests.

~~(c)~~ Both the preceptor and the AIT ~~will~~ shall sign the report, ~~form,~~ verifying the accuracy of the information.

~~(d)(e)~~ Weekly or monthly reports ~~must~~ shall be received in the Board's office within ten days of the end of the reporting period.

Statutory Authority G.S. 90-278; 90-285.

.0517 .0407 AIT TIME ON THE JOB

**.0514 .0408 CHANGE OF STATUS AND
DISCONTINUANCE**

(a) If the AIT desires to change preceptors, ~~he/she must~~ shall submit a Notice of Change of Status and/or Discontinuance form provided by the Board. Prior to changing preceptors, the AIT ~~must~~ shall notify the Board and the Board's Executive Director ~~Chairman~~ may grant such requests subject to approval at the next regularly scheduled board meeting.

(b) If the AIT desires to discontinue his/~~her~~ internship, the Notice of Change of Status and/or Discontinuance form ~~must~~ shall be submitted within 10 days of discontinuance before any accumulated training time may be considered should the AIT elect to re-enter his/~~her~~ internship program at a future date.

(c) The form requires the name of the AIT and preceptor.

the change requested, the effective date, reasons for the change, and any other information that the Board requests. Either the AIT or the preceptor ~~must~~ shall sign the form.

Statutory Authority G.S. 90-278; 90-285.

.0515 .0409 DISMISSAL FROM PROGRAM

(a) The preceptor and/or Board staff ~~will~~ shall inform the AIT of his performance as the program progresses.

(b) If the AIT's performance is not acceptable, the preceptor and/or Board staff ~~will~~ shall so inform him, and the AIT ~~will~~ shall be given an opportunity to correct the deficiencies.

(c) If the AIT does not correct the deficiencies, ~~either the preceptor, or the Board after consultation with the Board,~~ will shall notify the AIT that he can no longer participate in the program.

Statutory Authority G.S. 90-278; 90-285.

.0516 .0410 COMPENSATION OF AITS

(a) The Board ~~will~~ shall not pay the AIT compensation for his work in the program.

(b) The facility in which the AIT is training may compensate the AIT, but is not required to do so.

Statutory Authority G.S. 90-278; 90-285.

.0402 .0411 APPROVAL OF PROGRAMS OF STUDY IN ACCREDITED INSTITUTIONS

An AIT ~~must~~ shall obtain prior approval from the Board before taking a program of study designed to train and qualify applicants for licensure as nursing home administrators offered by an accredited university, college, or community college, correspondence program, or other board approved courses, which program contains instruction on the services provided by nursing homes, laws governing nursing homes, protection of patient interests and nursing home administration.

Statutory Authority G.S. 90-278; 90-285.

.0520 .0412 EXCEPTION TO TWELVE WEEK AIT PROGRAM

The minimum of 12 weeks of service as an AIT may be reduced at the discretion of the Board upon submission of evidence satisfactory to the Board that the applicant:

- (1) has had a management position for four years within the previous five years in a hospital which has beds licensed for nursing home level of care, in which position the level of responsibility and complexity for the management of human, financial, and material resources for the provision of care was of a magnitude at least equal to that of a licensed nursing home administrator, and in which there was exposure to and familiarity with the

subject areas outlined in ~~Rule .0704~~ 21 NCAC 37D .0605, or

- (2) has served as the assistant administrator or director of nursing of a facility licensed as a nursing home for four years within the previous five years, in which position the level of responsibility and complexity for the management of human, financial, and material resources for the provision of care was of a magnitude at least equal to that of a licensed nursing home administrator, and in which there was exposure to and familiarity with the subject areas outlined in ~~Rule .0704~~ 21 NCAC 37D .0605.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0500 - PRECEPTORS

.0507 .0501 APPLICATION FOR PRECEPTOR CERTIFICATION

(a) A licensed Nursing Home Administrator wishing to be certified as a preceptor for the AIT program may apply to the Board on an application obtained by writing: N.C. State Board of Examiners for Nursing Home Administrators, ~~2701 National Drive, Suite 123~~ 3733 National Drive, Suite 228, Raleigh, North Carolina 27612.

~~(b) The application form shall require such information as the applicant's name, address, licensing history, education, experience, and other information which the Board deems necessary.~~

Statutory Authority G.S. 90-278; 90-285.

.0508 .0502 PRECEPTOR QUALIFICATIONS

(a) To be certified as a preceptor the nursing home administrator ~~must~~ shall:

- (1) exemplify the highest ethical and professional standards and ~~has~~ has not have violated any standards stated in G.S. 90-285.1;
- (2) ~~have been the administrator of record practiced in the field of a nursing home facility for administration~~ have been the administrator of record of a nursing home facility for a minimum of two years or have a masters degree in health care administration and have been the administrator of record of a nursing home facility for ~~has practiced in the field~~ a minimum of one year;
- (3) certify that no revocation proceeding, suspension of admissions, or provisional license has been initiated or is in effect against his/~~her~~ facility(ies);
- (4) express himself well and be at ease in a teaching situation;
- (5) be the full time administrator of record of a facility that is licensed by the Division of Facility Services as a nursing home; ~~and be physically present in the facility a minimum of three days per week;~~

- (6) successfully complete a preceptor training course approved by the Board; within the past two years; and
- (7) complete 40 hours of continuing education during the 24 months preceding application for certification.

(b) A preceptor ~~must~~ shall be recertified biennially by the Board in accordance with the qualifications as set out in Paragraph (a) of this Rule at the time of license renewal.

(c) The preceptor and the AIT shall spend a minimum of four hours per week in orientation, direct instruction, planning and evaluation.

(d) An administrator licensed by reciprocity/endorsement who held an active preceptor certificate in another state may also receive a North Carolina preceptor certificate if all other requirements are met.

(e) Any administrator who otherwise meets all requirements of this Rule except for completion of the approved course under Subparagraph (a)(5) of this Rule and who has previously been certified as a preceptor may be issued a temporary preceptor certificate by the Board ~~Chairman~~ until such course is completed.

Statutory Authority G.S. 90-278; 90-285.

~~.0512~~ .0503 PRECEPTOR'S REPORTS

(a) ~~The preceptor shall make comments on the AIT's weekly/monthly report regarding the progress of his/her training.~~

(a)(b) At the end of the approved AIT program, the preceptor ~~will~~ shall submit a report and an evaluation of the AIT on forms provided by the Board. These forms are to be submitted to the Board within 10 days of completion of the AIT program. The forms ~~will~~ shall require the name of the AIT, the place of training, an evaluation of the AIT's abilities, and other information that the Board requests. The preceptor ~~will~~ shall sign the forms.

(b)(e) The reports ~~will~~ shall be filed in the AIT's file in the Board's office and ~~will~~ shall become a permanent record in the individual's file.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0600 - NATIONAL EXAM

.0601 ELIGIBILITY

(a) To be eligible to take the national exam, an applicant shall:

- (1) be approved for an AIT program which shall be completed within 45 days after the exam; or
- (2) be exempt pursuant to G.S. 90-278(1)(d); or
- (3) be a reciprocal applicant whose prior exam scores do not meet current N.C. requirements.

(b) Upon the failure of any examination the fourth time, the AIT shall be disqualified from continuing in the program. Nothing in this Rule shall be construed to prevent the applicant from reapplying for entrance to the AIT

program.

(c) Upon the third failure of any exam required by the Board, the AIT and the preceptor shall submit to the Board a program to strengthen the candidate's weakness as demonstrated by the previous exam results. Upon approval by the Board of the program and completion thereof by the candidate, he shall be eligible to retake the exam.

Statutory Authority G.S. 90-278; 90-285.

.0602 NATIONAL EXAM APPLICATION

To sit for the National Exam, a person shall submit an exam application on a form provided by the Board, which application shall be received 30 days prior to the examination date. Applicants shall also submit an initial application for licensure as described in 21 NCAC 37D .0201.

Statutory Authority G.S. 90-285.

.0603 NATIONAL EXAMINATION ADMINISTRATION

(a) The national exam shall be offered four times annually on the second Thursday in the months of January, April, July and October.

(b) An applicant shall sit for and pass the national and state exams within one year of the date of completion of the AIT program in order to meet the AIT requirement.

(c) An applicant shall pay two-hundred dollars (\$200.00) each time he takes the national examination.

Statutory Authority G.S. 90-280; 90-285.

~~.0801~~ .0604 GRADE REQUIRED

~~.0701~~ .0605 SUBJECT AREAS

The ~~written or oral~~ national examination shall include, but need not be limited to, the following subjects:

- (1) Resident Care Management,
- (2) Personnel Management,
- (3) Financial Management,
- (4) Environmental Management,
- (5) Regulatory Management,
- (6) Organizational Management.

Statutory Authority G.S. 90-278; 90-285.

SECTION .0700 - STATE EXAM

.0701 ELIGIBILITY

To be eligible to take the state examination, the applicant shall be qualified under Rules .0601 and .0603(b) of this Subchapter.

Statutory Authority G.S. 90-285.

.0702 APPLICATION

To sit for the state examination, a person shall submit an

application on a form provided by the Board.

Statutory Authority G.S. 90-285.

.0703 STATE EXAMINATION ADMINISTRATION

(a) The state examination shall be given on the same dates as the national examination. It may also be offered on different dates to reciprocity applicants and to applicants who have passed the national examination but have previously failed the state examination.

(b) An applicant shall pay a fee of seventy-five dollars (\$75.00) each time he takes the state examination.

Statutory Authority G.S. 90-280, 90-285.

SUBCHAPTER 37E - RECIPROCITY/ ENDORSEMENT

SECTION .0100 APPLICATIONS

~~.0912~~ .0101 APPLICATION PROCESS

(a) The Board may issue a license, to a nursing home administrator who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of the current licensing fee, successful completion of the state examination, and submission of evidence satisfactory to the Board as to the following:

- (1) such applicant for licensure ~~must~~ shall have personal qualifications, education, training ~~or~~ and experience at least substantially equivalent to those required in this state;
- (2) such applicant ~~must~~ shall be licensed in another state that gives similar recognition and reciprocity/endorsement to nursing home administrator licenses of this state; and
- (3) such applicant for license by reciprocity/endorsement holds a valid active license as a nursing home administrator in the state from which he is transferring.

Statutory Authority G.S. 90-280; 90-285; 90-287.

~~.0912~~ .0102 APPLICATION CONTENTS

(b) An applicant for reciprocity/endorsement shall submit a three weeks prior to the personal interview, a completed application, background resume, certified college transcript(s), three reference forms (one of which must shall be from an previous employer) from individuals not related to the applicant who shall certify to the good moral character of the applicant as defined in Rule .0303 of this Chapter, 21 NCAC 37D .0203 licensing questionnaire(s) from every state where the applicant has held a license, a one hundred twenty five dollar (\$125.00) application fee, and appear before the Board for a personal interview.

Statutory Authority G.S. 90-280; 90-285; 90-287.

~~.0912~~ .0103 DENIAL AND REVOCATION

(e) The Board shall have the power, after due notice and an opportunity to be heard at a hearing, to revoke or suspend the nursing home administrator license issued to any person under this Rule upon evidence satisfactory to the Board that the duly constituted authorities of any other state have lawfully revoked or suspended the nursing home administrator license issued to such person by such state.

Statutory Authority G.S. 90-280; 90-285; 90-287.

SUBCHAPTER 37F - TEMPORARY LICENSES

SECTION .0100 - TEMPORARY LICENSE REQUIREMENTS

~~.1001~~ .0101 PREREQUISITES FOR TEMPORARY LICENSURE

(a) ~~A temporary license may be issued by the chairman of the Board~~ The chairman of the Board may issue a temporary license through the Executive Director for an initial period of time from issuance until the next Board meeting to an individual temporarily filling the position of a nursing home administrator provided one of the unusual circumstances in Paragraph (b) of this Rule exists and the prerequisites for temporary license in Paragraph (c) of this Rule have been met.

(b) The nursing home ~~must~~ shall prove to the satisfaction of the Board that one of the following unusual circumstances exists:

- (1) sudden death of the licensed administrator;
- (2) unexpected transfer of the licensed administrator; or
- (3) unforeseeable termination of the licensed administrator.

(c) An individual applying for a temporary license ~~must~~ shall:

- (1) be at least 18 years of age;
- (2) be of good moral character;
- (3) be of sound physical and mental health;
- (4) have previously served as a licensed administrator in another state, served as assistant administrator in a nursing home for at least two years, served as director of nursing in a nursing home for at least one year, or be otherwise comparably qualified.

Statutory Authority G.S. 90-278; 90-279; 90-285.

~~.1003~~ .0102 ISSUANCE AND RENEWAL OF TEMPORARY LICENSE

(a) An applicant for a temporary license shall request, in writing, a temporary license package from the Board, provide a letter from the owner or regional manager requesting the issue of such license for the facility, stating the circumstances necessitating the issuance of a temporary

license, and submit a completed application package including payment of a one-hundred dollar (\$100.00) fee.

~~(b)(a)~~ After an applicant is issued a temporary license he ~~must~~ shall successfully pass the state examination as administered by the Board at the next scheduled testing period to retain the temporary license.

~~(c)(b)~~ A temporary license may be renewed at the discretion of the Board for an additional period not to exceed a total of six months.

~~(d)(e)~~ A temporary license ~~will~~ shall be issued to the licensee to permit him to practice only in the nursing home to which he is assigned on the date of issuance.

~~(e)(d)~~ Any person having a temporary license issued pursuant to the Rules of this Section shall pay a fee in the amount of one hundred dollars (\$100.00). If the Board renews the temporary license, no further fee shall be required.

Statutory Authority G.S. 90-278; 90-280; 90-285.

SUBCHAPTER 37G - RENEWAL, INACTIVE, RESTORATION AND REINSTATEMENT, DUPLICATE

SECTION .0100 - RENEWAL REQUIREMENTS

~~.0903~~ .0101 RENEWAL

~~(a)~~ A license shall expire on the 30th day of September of the second year following its issuance.

~~(a)(b)~~ The licensee shall biennially apply to the Board for a new certificate of registration to be displayed with the permanent license and report any facts requested by the Board on forms provided by the Board.

~~(b)(c)~~ The form ~~will~~ shall include the name of the licensee, address, the place of the applicant's practice, at least 30 hours of continuing education credits, any criminal convictions and administrative disciplinary action by any other licensing boards in the proceeding two years and any other information which the Board may feel it needs to act upon the application.

~~(e)(d)~~ As a courtesy, the Board ~~will~~ shall send renewal notices to the last address on record; it is the individual licensee's responsibility to keep this information current with the Board office.

~~(e)~~ A licensee shall notify the Board in writing within 15 days of any change of address (home and work) or employment.

Statutory Authority G.S. 90-285; 90-286.

~~.0904~~ .0102 RENEWAL FEE

~~(a)~~ Upon making application for a new certificate of registration a licensee shall pay a biennial licensure fee of ~~two hundred fifty dollars (\$250.00).~~ three hundred dollars (\$300.00).

~~(b)~~ Such licensee shall provide documentation of the completion of 30 hours of continuing education approved by

the Board during each biennial period.

Statutory Authority G.S. 90-280; 90-285; 90-286.

SECTION .0200 - INACTIVE LICENSES

~~.0906~~ .0201 INACTIVE STATUS REQUIREMENTS

~~(a)~~ A license shall expire on the 30th day of September of the second year following its issuance.

~~(b)(a)~~ An inactive list of administrators who are not practicing in this state shall be maintained by the Board. An administrator who desires to be placed on the inactive status list ~~must~~ shall make a written request and submit a twenty-five dollar (\$25.00) fee to the Board. Inactive status ~~will~~ shall only be granted on a prospective basis.

~~(e)(b)~~ A request to be placed on the inactive status list ~~must~~ shall be submitted to the Board no later than 30 days after expiration of the license under Paragraph (a) of this Rule. Failure to submit the request within this time shall result in automatic expiration of the license retroactive to the date set forth in Paragraph (a) of this Rule.

~~(d)(c)~~ An administrator may remain on the inactive list for a period not to exceed five years.

Statutory Authority G.S. 90-280; 90-285.

~~.0902~~ .0202 ACTIVATION OF INACTIVE LICENSE

~~(a)~~ A nursing home administrator whose license has been inactive for less than three years may activate the license by submitting an application to the Board, documentation of the applicant's completion of 30 hours of continuing education approved by the Board during the preceding 24 months, and payment of the current license renewal fee.

~~(b)~~ A nursing home administrator whose license has been inactive for less than five years but more than three years may activate the license by providing the items in Paragraph (a) of this Rule and, in addition, by successfully completing the state examination.

~~(c)~~ A previously licensed nursing home administrator whose license has been inactive for a period exceeding five years ~~must~~ shall comply with all the requirements for licensure in this Chapter.

Statutory Authority G.S. 90-280; 90-285; 90-286.

SECTION .0300 - REINSTATEMENT

~~.0913~~ .0301 RESTORATION AND REINSTATEMENT OF LICENSE

~~(a)~~ A license may be ~~restored~~ reinstated, for good cause, after a period of two years after revocation by the Board in its discretion. Good cause means that the applicant is completely rehabilitated with respect to the conduct which was the basis of the discipline. Evidence of such rehabilitation shall include evidence that:

- (1) such person has not engaged in conduct during the discipline period which, if the person had been licensed during such period, would have constituted the basis for discipline under G.S. 90-285.1;
 - (2) with respect to any criminal conviction which constituted any part of the previous discipline, the person has completed the sentence imposed, and is no longer on probation, whether supervised or unsupervised; and
 - (3) restitution has been made to any aggrieved party.
- ~~(b) If a conviction for which a license is revoked or suspended is subsequently reversed on appeal and the accused acquitted, the accused's license shall be restored.~~

Statutory Authority G.S. 90-285.

SECTION .0400 - DUPLICATE LICENSES

~~.0914~~ .0401 DUPLICATE LICENSES REQUIREMENTS

(a) Upon receipt of satisfactory evidence that a license or certificate of registration has been lost, mutilated, or destroyed, the Board may issue a duplicate license or certificate of registration upon payment of a fee of ~~ten dollars (\$10.00)~~ twenty five dollars (\$25.00).

(b) If a licensee's name has legally changed from the name under which the individual was originally licensed by the Board, the licensee shall furnish copies of the documents legally authorizing the name change, along with the twenty-five dollar (\$25.00) fee, when requesting a duplicate certificate.

Statutory Authority G.S. 90-280(d).

SUBCHAPTER 37H - CONTINUING EDUCATION

SECTION .0100 - CONTINUING EDUCATION REQUIREMENTS

.0101 CONTINUING EDUCATION HOURS REQUIREMENT

Every licensee shall document successful completion of at least 30 hours of approved continuing education for each biennial period of registration.

Statutory Authority G.S. 90-285.

~~.0404~~ .0102 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of these Rules. It is the responsibility of the licensee to keep a record of his continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community

college, associations, professional societies, or organizations shall:

- (1) contain a minimum of two classroom hours of academic work and not more than eight classroom hours within a 24-hour period; and
 - (2) include instruction in the following general subject areas or their equivalents:
 - (A) Resident Care Management;
 - (B) Personnel Management;
 - (C) Financial Management;
 - (D) Environmental Management;
 - (E) Regulatory Management;
 - (F) Organizational Management.
- (b) Certified courses not administered by the Board shall:
- (1) be submitted to the Board for approval at least 30 days prior to the presentation of the program;
 - (2) be accompanied with a fee of ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00) to cover the cost of reviewing and maintaining records associated with the continuing education program; and
 - (3) be approved for a period of one year from the date of initial presentation.

(c) Courses from an accredited university or community college shall meet all requirements as outlined in Paragraphs (a) and (b) of this Rule. A licensee submitting such courses for continuing education credit shall submit a copy of the final grade for said course work. Continuing education credit hours granted by the Board shall be the same as those granted by the institution.

(d) Credit may be earned for participation in teleconferenced course only if there is a third party present to verify the licensee's attendance throughout the course. No credit can be earned for correspondence courses.

~~(e)~~ (e) The Board shall charge a fee pursuant to G.S. 90-280 for continuing education courses.

Statutory Authority G.S. 90-278; 90-280; 90-285; 90-286.

~~.0405~~ .0103 VERIFICATION OF ATTENDANCE

Upon completion of a certified continuing education course, the sponsor of the course shall issue certificates of attendance to those who attend. The sponsor ~~must~~ shall also submit a roster of those who attend to the Board within ten days. It is the participant's responsibility as a licensed Nursing Home Administrator to maintain course certificates and submit copies with the biennial renewal fee.

Statutory Authority G.S. 90-278; 90-285; 90-286.

.0104 PRECEPTOR CREDIT

A preceptor applying for renewal who has served as a preceptor for a North Carolina AIT within the previous two years may receive up to six hours of continuing education credit at the rate of two hours per eight weeks of service as a preceptor.

Statutory Authority G.S. 90-285.

SUBCHAPTER 37I - PROFESSIONAL STANDARDS

SECTION .0100 - INVESTIGATIONS

~~.1122~~ .0101 INVESTIGATION: DISCIPLINE: AND CONTESTED CASE PROCEEDINGS

(a) The Chairman of the Board shall ~~designate~~ appoint a Professional Standards Committee comprised of another member of the Board, ~~to assist the Board Executive Director and legal counsel, in determining to investigate the qualifications of applicants and in determining to review and investigate complaints, when the Board should take disciplinary action against a person registered with the Board. The designated member of the Board, the Board Director, or another non-member designated by the Board may investigate claims made by applicants and complaints made against those registered with the Board to the extent needed to make a determination.~~

(b) ~~The Board Director shall report determinations made by him and the designated member to the Board, which shall decide whether to grant or deny an application or whether, and what kind of, disciplinary action should be taken against a person registered with the Board. If the Board's action results in a contested case, the designated member who participated in the initial determination concerning the applicant or registrant may not participate in the contested case proceedings and may not participate in making the final decision in the case. in the investigation of the matter may not participate as a member of the hearing panel or in deliberation of the contested case.~~

(c) ~~The Professional Standards Committee shall recommend to the Board whether the allegations in any complaint against an applicant or licensee, if proven, would warrant a contested case proceeding pursuant to G.S. 150B-38 through 150B-42.~~

(e) ~~(d) Under G.S. 150B-40(e), the Board may elects not to hear its contested cases and refers its contested cases to the Office of Administrative Hearings. That office makes a proposal for decision in a case, and the Board makes the final decision.~~

Statutory Authority G.S. 90-285; 150B-40(e).

CHAPTER 40 - BOARD OF OPTICIANS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Opticians intends to amend rule cited as 21 NCAC 40 .0314.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:00 a.m. on

December 18, 1995 at the State Board of Opticians, 222 North Person Street, Raleigh, NC 27601.

Reason for Proposed Action: To provide for the training of apprentices by establishing two curricula from which apprentices may choose.

Comment Procedures: Interested persons may present statements, orally and in writing, at the public hearing and in writing prior to the hearing by mail addressed to the State Board of Opticians, P.O. Box 25336, Raleigh, NC 27611-5336.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

SECTION .0300 - QUALIFICATIONS: APPLICATIONS: AND LICENSING

.0314 APPRENTICESHIP AND INTERNSHIP REQUIREMENTS: REGISTRATION

(a) Each apprentice or intern entering the apprenticeship or internship shall register with the Board and be issued a certificate of registration. Registration of the apprenticeship automatically expires on the first day of July of each year, and, in order for the apprenticeship to continue, registration must be renewed each succeeding July 1 until the apprenticeship is completed. If the apprenticeship or internship is to be supervised by an ophthalmologist or optometrist, the supervisor shall provide a statement in which he agrees to abide by the same requirements as would an optician providing the same training.

(b) Part-time work or work as an optical salesman or consultant shall not apply toward completion of apprenticeship or internship.

(c) ~~An applicant, through apprenticeship or internship, shall have received his training by working full time. The training as an apprentice or intern shall be full time, defined as a minimum of 35 hours per week, under the supervision of a licensed optician, ophthalmologist, or optometrist following a curriculum approved by the Board.~~

(d) The curriculum for the apprentice shall include one of the following, as chosen by the apprentice:

- (1) an optical curriculum certificate program presented by a school of opticianry approved pursuant to 21 NCAC 40 .0312, or
- (2) the National Academy of Opticianry's home study career progression program.

The classroom and laboratory time spent in the optical curriculum certificate program shall be credited as part of the apprenticeship period and its minimum of 35 hours per week. Certification that the apprentice has completed and passed one of the programs shall be required. Apprentices registered with the Board on or before March 1, 1996, shall not be subject to the provisions of this Paragraph and may satisfy the apprenticeship requirement by completing the training program in which they are then registered.

(e) ~~(d)~~ No more than two persons, whether apprentices or interns or a combination, may be trained by an optician, ophthalmologist, or optometrist at the same time.

(f) ~~(e)~~ An apprentice or intern shall be credited with training time only from the date of registration with the Board as an apprentice or intern. The apprenticeship or internship may not be interrupted for more than 12 months at the time.

(g) ~~(f)~~ When registering to serve a six month internship, the applicant must have completed the three and one-half years of apprenticeship as required by G.S. 90-240(a)(2) and (3) or have completed the course of training required by G.S. 90-240(a)(1).

~~(g) The Board shall make available to apprentices a list of Board approved training courses which the Board recommends that apprentices take as being of assistance to them in preparation for the examination for licensure.~~

Statutory Authority G.S. 90-239; 90-240; 90-243; 90-249.

CHAPTER 45 - EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors intends to adopt rules cited as 21 NCAC 45 .0101, .0201 - .0203, .0301 - .0303, .0401 - .0402, .0501, .0601, .0701, .0801 - .0802, .0901, and .1001.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 10:30 a.m. on January 20, 1996 at F. Roger Page Business & Technology Center, 1001 S. Marshall Street, Suite #5, Winston-Salem, NC 27101.

Reason for Proposed Action: Adopting rules pursuant to Article 26 (90-380 through 90-396) of the North Carolina General Statutes.

Comment Procedures: Comments may be submitted in writing and addressed to: Robert E. Johnston, DST, Chair, NC State Board of Examiners of Fee-Based Practicing Pastoral Counselors, 1001 S. Marshall Street, Suite #5, Winston-Salem, NC 27101. Comments will be received until the public hearing date on January 20, 1996.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SECTION .0100 - GENERAL PROVISIONS

.0101 ADDRESS

The mailing address for the North Carolina State Board of

Fee-Based Practicing Pastoral Counselors is 1001 S. Marshall Street, Suite #5, Winston-Salem, NC 27101.

Statutory Authority G.S. 90-385(f); 90-385(e).

SECTION .0200 - APPLICATION FOR CERTIFICATION

.0201 INFORMATION REQUIRED

- Typed or printed Application form.
- Typed or printed Documentation for Certification form.
- Official graduate transcript(s) sent directly to the Board by the training institution(s).
- Three completed reference forms from professionals who are familiar with the applicant's work.
- Completed supervision reports from past and/or present supervisors.
- Written evidence, transcripts or other document(s) evidencing satisfactory completion of a course of study in pastoral psychotherapy.

Statutory Authority G.S. 90-385(f); 90-387(a)(4); 90-387(b)(4).

.0202 REVIEW PROCEDURE

(a) A copy of the applicant's application, documentation for certification form, and all other required supporting documentation is mailed to all Board members prior to the next scheduled meeting. The Board then reviews the applicant's application, documentation for certification form, and all other required supporting documentation at the next meeting.

(b) If approved, the applicant is so informed and is given information regarding the exam.

(c) If the credentials are unacceptable, the applicant is so informed and is given an explanation of the area(s) which are considered deficient. Applicants may remedy deficiencies within one year from the date of notification of such without having to reapply.

(d) If a question arises during the review process regarding comments made by endorsers or supervisors, the Board will seek to resolve the question by communicating with the endorser or supervisor, or the Board may refer the matter to their legal counsel or to a member of the Board or employee of the Board for investigation.

(e) If certification is denied, an explanation of the grounds for denial are given. The applicant may at this time present additional written information in support of the application to be considered by the Board.

Statutory Authority G.S. 90-385(f); 90-387(a)(4); 90-387(b)(4).

.0203 ISSUANCE OF CERTIFICATE

An applicant who has met all of the requirements as a Fee-Based Practicing Pastoral Counselor or Fee-Based

Pastoral Counseling Associate is issued a certificate. This certificate displays the applicant's name, date of certification, certification number, the signature of the current chairperson, and the official seal of the Board.

Statutory Authority G.S. 90-385(f); 90-387(a); 90-387(b).

SECTION .0300 - EXAMINATION

.0301 TYPES

(a) The Board employs a written and oral examination to test an applicant's knowledge in the following areas:

- (1) Code of Ethics;
- (2) Fee-Based Practicing Pastoral Counselors Certification Act;
- (3) Individual Pastoral Counseling and Psychotherapy;
- (4) Marriage, Family, or Group Counseling and Psychotherapy;
- (5) Religion, Theology, and Ethics of Pastoral Counseling.

(b) The written examination is customarily given annually on a selected date in the spring. A passing score will consist of 70% correct responses on the written exam.

(c) The oral examination is administered to applicant during the next regularly scheduled Board meeting. A passing score on the oral examination is determined by a majority vote of the Board members present and voting.

Statutory Authority G.S. 90-385(f); 90-387(a)(3); 90-387(b)(3).

.0302 REPORTING OF SCORES

Each applicant for certification is informed in writing of his passage or failure on the Pastoral Counseling Certification Examination. Those who have not passed the examination are informed of the policy regarding re-examination.

Statutory Authority G.S. 90-385(f); 90-387(a)(3); 90-387(b)(3).

.0303 RE-EXAMINATION

An applicant who has not passed the written/oral examination is allowed to retake the examination provided at least six months has lapsed between the examinations and the applicant pays the required examination fee.

Statutory Authority G.S. 90-385(f); 90-387(a)(4)h; 90-387(b)(4)s.

SECTION .0400 - CERTIFICATION RENEWAL

.0401 CERTIFICATION RENEWAL FORM

The renewal form is mailed in the spring of each year with renewal being on or before January 1, of the following year. The form asks for current home and business addresses and telephone numbers. Pastoral Counseling

Associates are required to submit an additional form documenting required supervision.

Statutory Authority G.S. 90-385(f); 90-389.

.0402 SECOND NOTICE

After the renewal date has passed, a second notice is sent to each delinquent individual, advising them that the renewal fee with the late fee is due. Failure to renew a certificate for a period of more than three months after the annual renewal date will result in suspension of the certificate.

Statutory Authority G.S. 90-385(f); 90-389.

SECTION .0500 - CONTINUING EDUCATION

.0501 CONTINUING EDUCATION REQUIREMENTS

(a) A form for continuing education requirements is mailed with the annual renewal form. Each Fee-Based Practicing Pastoral Counselor and Pastoral Counseling Associate must complete a total of 50 hours of continuing education in the following identified areas:

- (1) Category I - Pastoral Theology;
- (2) Category II - Clinical Theory and Practice;
- (3) Category III - Pastoral, Psychological and Psychiatric Diagnosis;
- (4) Category IV - Consultation and Supervision;
- (5) Category V - Books and Professional Journals;
- (6) Category VI - Other.

(b) Of the 50 hours of continuing education required, 20 hours must be contact hours in either Category I - Pastoral Theology, Category II - Clinical Theory and Practice or Category III - Pastoral, Psychological and Psychiatric Diagnosis.

(c) A continuing education year is established as June 1 to May 31 of the following year.

Statutory Authority G.S. 90-385(f); 90-389.

SECTION .0600 - DEFINITIONS

.0601 EQUIVALENCY

(a) Although Article 26 makes reference to equivalencies regarding Clinical Pastoral Education, Ordination, Graduate Degrees in Pastoral Counseling, and full-time work as a rabbi, priest, minister or religious leader, the Board makes no generalized rules for equivalencies. The Board is dedicated to certifying competent pastoral psychotherapists in keeping with strict standards and the Code of Ethics. Consequently, the Board encourages no short cuts to meeting the legislated standards. Equivalencies are the exception rather than the standard and are considered on a case by case basis.

(b) Should a candidate choose to make a case for equivalent experience, education or training, the candidate should document a formal request to the Board. The Board will

assign a Board member to meet with the candidate and review the request. The request will then be taken to the Board for either approval or disapproval. If approved, a specific set of guidelines for fulfilling equivalency will be established based on the applicant's particular experience, education and training. Should equivalency be considered, the onus for documentation will rest entirely with the candidate. Should equivalency not be granted, the candidate will be given consultation regarding how to fulfil the particular standard.

Statutory Authority G.S. 90-385(f); 90-387(a)(4)c,d,f,g; 90-387(a)(4)c,e,f,h.

SECTION .0700 - TEMPORARY CERTIFICATES

.0701 ISSUANCE OF TEMPORARY CERTIFICATE

The Board of Examiners will issue temporary certificates at no additional cost than that of customary fees at the time of application to the Board of Examiners for a temporary certificate.

- (1) A person who requests a temporary certification as a Fee-Based Practicing Pastoral Counselor or a Fee-Based Practicing Pastoral Counseling Associate must:
 - (a) Submit an application to take the next examination offered by the Board and pay the non-refundable application fee.
 - (b) Pay the non-refundable current examination fee for Fee-Based Practicing Pastoral Counselor or the non-refundable current examination fee for Fee-Based Practicing Pastoral Counseling Associate.
 - (c) Complete all of the documentation for certification form and all other supporting documentation required by the Board for assessing whether the candidate is qualified to take the written and oral examination.
 - (d) Be assigned a Board member to function as a liaison/presenter to the full Board and to the sub-committee assigned by the Board to review the request.
 - (e) Meet with the liaison/presenter in an individual consultation prior to the meeting with the sub-committee.
 - (f) Pass the multiple choice components of the Board's written examination which covers knowledge of Article 26 and The Code of Ethics.
 - (g) Be interviewed by a sub-committee of the Board and be recommended by the sub-committee to the Board for a temporary certificate.
- (2) Temporary certificates are valid for no longer than one year and are automatically terminated at the time of the next examination given by the Board.

Statutory Authority G.S. 90-385(f); 90-384.

SECTION .0800 - SUPERVISION

.0801 APPROVED SUPERVISION

(a) Any supervisor of a candidate for certification as a Fee-Based Practicing Pastoral Counselor or Fee-Based Pastoral Counseling Associate must give evidence of being certified or licensed as a Diplomate in the American Association of Pastoral Counselors (AAPC) or as an Approved Supervisor in the American Association of Marriage and Family Therapy (AAMFT) or as a clinician and experienced supervisor in an appropriate mental health discipline such as psychiatry or psychology. In addition, a supervisor must give certifiable evidence that he himself has received supervision in the particular psychotherapeutic focus which he purports to provide to the candidate. For example, an AAPC Diplomate who provides supervision in object relations marriage and family therapy to a candidate must himself have received certifiable supervision in object relations marriage and family therapy or a psychiatrist who provides supervision in in-depth self-psychology to a candidate must give certifiable evidence of himself having received such supervision.

(b) A N.C. State Certified Fee-Based Practicing Pastoral Counselor who is not otherwise certified or licensed as a supervisor may be recognized as providing approved supervision of candidates seeking certification as a Fee-Based Practicing Pastoral Counselor or as a Fee-Based Pastoral Counseling Associate upon satisfactory completion of the following requirements:

- (1) Supervise under supervision by an approved supervisor a minimum of five supervisees:
 - (A) At least three supervisees must be ordained ministers who intend to become certified pastoral counselors;
 - (B) All five supervisees must receive a minimum of 30 hours of supervision while the supervisor under supervision must receive a minimum of 50 hours of supervision:
 - (i) The supervisor under supervision must receive a minimum of 30 hours of one to one supervision;
 - (ii) The supervisor under supervision must submit seven copies of his current evaluations of the three taped pastoral counseling supervisees and seven copies of the self-evaluations of these pastoral counseling supervisees learning experiences during the supervisory process;
 - (iii) Both the supervisor under supervision and the approved supervisor must give certifiable evidence that they have received supervision in the particular psychotherapeutic focus which they purport to provide to the pastoral counseling supervisees;
- (2) Supervisor of candidate supervisor must provide

evaluation to the Board of the candidate:

- (A) Statement must include supervisory goals;
- (B) Statement must include an assessment of the candidate's knowledge of and application of the theory of supervision;
- (C) Statement must include an assessment of the candidate's supervision;
- (3) Candidate must submit copies of his current evaluations of two taped supervisees to the Board;
- (4) Candidate must submit copies of the self-evaluations of the two taped supervisees' learning experiences in pastoral counseling supervision to the Board;
- (5) Candidate supervisor must submit a statement of his theory of pastoral counseling supervision which is substantiated by his work with the five supervisees to the Board;
- (6) The candidate supervisor may be required to meet with the Board or its representatives before final recognition as an approved supervisor by the Board is recognized.

Statutory Authority G.S. 90-385(f); 90-387(a)(4)d; 90-387(b)(4)h.

.0802 TYPES OF SUPERVISION

(a) An applicant who presents himself for certification as a Fee-Based Practicing Pastoral Counselor is required to have 250 hours of supervision of 1,375 hours of pastoral counseling. The expectation is that ordinarily these supervisory sessions shall occur on a weekly basis at which time the supervisee presents audio or video recordings of his work and that this work be accompanied by written clinical and theological assessments. The breakdown on types of supervision required to meet this requirement are as follows:

- (1) 75 hours - Supervision of In-depth Psychotherapy (Defined as the same client with the same supervisor on a weekly basis);
- (2) 75 hours - Supervision of a variety of cases;
- (3) 50 hours - Supervision of Couples Therapy;
- (4) 25 hours - Supervision of Family Therapy;
- (5) 25 hours - Supervision of Group Therapy.

(b) An applicant who presents himself for certification as a Fee-Based Practicing Pastoral Counseling Associate is required to have 125 hours of supervision of 375 hours of pastoral counseling. The applicant needs these supervisory hours predominately in Subparagraphs (a)(1),(2) and (3) of those required for Fee-Based Practicing Pastoral Counselor.

Statutory Authority G.S. 90-385(f); 90-387(a)(4)d; 90-387(b)(4)h.

SECTION .0900 - INDIVIDUAL PSYCHOTHERAPY EXPERIENCE

.0901 REQUIREMENTS FOR INDIVIDUAL

PSYCHOTHERAPY EXPERIENCE

(a) In order to protect the public safety and welfare, an applicant for certification to engage in the practice of fee-based pastoral counseling and pastoral psychotherapy must engage in an in-depth psychotherapy or psychoanalysis as follows:

- (1) An applicant who presents himself for certification as a fee-based practicing pastoral counselor must engage in a personal in-depth psychotherapy or psychoanalysis of his intrapsychic and interpersonal psychodynamics for a minimum of 100 consecutive hours with an appropriately certified or licensed psychotherapist or psychoanalyst.
- (2) An applicant who presents himself for certification as a fee-based practicing pastoral counseling associate must engage in a personal in-depth psychotherapy or psychoanalysis of his intrapsychic and interpersonal psychodynamics for a minimum of 50 consecutive hours with an appropriately certified or licensed psychotherapist or psychoanalyst.

(b) If after a failed oral examination the Board assesses that further in-depth psychotherapy or psychoanalysis is required in order to protect the public welfare and make ready the applicant for certification, the Board will document its requirement to the applicant as a condition for reapplication.

Statutory Authority G.S. 90-385(f); 90-381.

SECTION .1000 - ETHICS

.1001 CODE OF ETHICS

The relevant Code of Ethics of the American Association of Pastoral Counselors (AAPC) are defined by the Board in accordance with the parameters of Article 26.

Statutory Authority G.S. 90-385(f); 90-390(a)(7).

CHAPTER 46 - BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Pharmacy intends to amend rules cited as 21 NCAC 46 .1204, .1317, .1401, .1505, .1601 - .1604, .1607, .1703, .2104, .2403, .2502, .2504, .2602, .2609; adopt rules cited as 21 NCAC 46 .1410 - .1417, .1810 - .1811, .2506, .2611; repeal rules cited as 21 NCAC 46 .1402 - .1404, .1406, .1408, .1701 - .1705, .1910.

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on the following dates and locations:

January 22, 1996
Institute of Pharmacy
109 Church Street
Chapel Hill, North Carolina

February 20, 1996
Mountain Area Health Education Center
Lecture Hall
501 Biltmore Avenue
Asheville, North Carolina 28801

Reason for Proposed Action:

21 NCAC 46 .1204 - to correct address for the Board office.
21 NCAC 46 .1317 - to define certain terms used in the rules governing health care facilities.
21 NCAC 46 .1401 - to require the registration and permitting of pharmacies located in health care facilities.
21 NCAC 46 .1402 - .1404, .1406, .1408 - rules no longer necessary because Section revised.
21 NCAC 46 .1410 - to specify requirements for personnel of a health care facility pharmacy.
21 NCAC 46 .1411 - to specify responsibilities of the pharmacist manager of a health care facility pharmacy.
21 NCAC 46 .1412 - to specify physical requirements for a health care facility pharmacy.
21 NCAC 46 .1413 - to specify procedures for the safe distribution of drugs in a health care facility in the absence of the pharmacist.
21 NCAC 46 .1414 - to specify procedures for drug and device distribution and control in a health care facility.
21 NCAC 46 .1415 - to specify procedures for medication dispensing in health care facility emergency departments.
21 NCAC 46 .1416 - to specify procedures for repackaging drugs within a health care facility for subsequent dispensing or administration.
21 NCAC 46 .1417 - to allow the use of automated dispensing devices in institutional pharmacies with a pharmacy permit if the pharmacist manager has developed satisfactory procedures to assure safe and effective patient therapy.
21 NCAC 46 .1505 - to delete laboratory work from the practical pharmacy examination and to add patient counseling and drug utilization review to the practical pharmacy examination.
21 NCAC 46 .1601 - to allow the Board to issue and renew multiple permits for pharmacies operating at one location and to specify requirements for such pharmacies.
21 NCAC 46 .1602 - to change a requirement for license by reciprocity by requiring a score on an examination equivalent to the North Carolina examination which would qualify for licensure in North Carolina at the time of examination.
21 NCAC 46 .1603 - to specify that a new permit is required for a change of ownership of an established pharmacy which results in a change of more than 50 percent interest in the pharmacy, unless certain exemptions apply.
21 NCAC 46 .1604 - to specify when a valid permit may be

transferred and a new permit is not required.

21 NCAC 46 .1607 - to allow the Board to take disciplinary action against the registration of an out-of-state pharmacy for failing to comply with G.S. 90-85.21A and to shorten the time periods the Board must wait before taking action on a negligence complaint against a registered out-of-state pharmacy after referring the complaint to the state where the pharmacy is located.

21 NCAC 46 .1701 - .1705 - rules not mandated by Pharmacy Practice Act.

21 NCAC 46 .1703 - Alternative 1 - to require that registered nurses authorized to dispense drugs shall only dispense drugs listed in the written standing protocols approved and signed by both the supervising physician(s) and the registered nurse and maintained in each approved practice site and to require that assistants to a physician authorized to dispense drugs shall be limited to the dispensing of drugs that are delegated by the supervising physician.

Alternative 2 - to require that registered nurses or assistants to a physician authorized to dispense drugs shall only dispense those drugs listed on the formulary approved by the Board.

21 NCAC 46 .1810 - to specify that changes in prescription orders by anyone other than a prescriber constitutes the practice of pharmacy.

21 NCAC 46 .1811 - to prohibit pharmacists from dispensing and permit holders from allowing pharmacists to dispense prescription drugs at such an excessive rate as to pose a danger to the public health or safety.

21 NCAC 46 .1910 - form described no longer used.

21 NCAC 46 .2104 - to specify that a committee on nominations shall nominate eligible candidates for each position to be filled on the Board and the device and medical equipment subcommittee.

21 NCAC 46 .2403 - to add that vitamin and mineral supplements may be dispensed by registered nurses in local health department clinics.

21 NCAC 46 .2502 - to allow the Board, in any Board proceeding, to consider compliance or noncompliance with the reporting requirements of Paragraph (k) of this Rule as an aggravating or mitigating factor.

21 NCAC 46 .2504 - to specify patient counseling requirements for inmates.

21 NCAC 46 .2506 - to specify requirements to be completed prior to granting a pharmacist authorization to administer drugs.

21 NCAC 46 .2602 - to delete an incorrect statutory citation.

21 NCAC 46 .2609 - to require rehabilitation equipment suppliers to maintain liability insurance of at least one million dollars worth of coverage.

21 NCAC 46 .2611 - to set out requirements for medical equipment suppliers.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change, may file a notice with the Board at least 10 days prior to the

public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's address is Board of Pharmacy, P.O. Box 459, Carrboro, NC 27510-0459. Written submission of comments or argument will be accepted at any time up to and including March 1, 1996.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .1200 - ORGANIZATION OF THE BOARD

.1204 OFFICE OF THE BOARD

The office of the Board is located at ~~602 H Jones Ferry Road, Chapel Hill~~ Carrboro Plaza Shopping Center, Hwy. 54 Bypass, Suite 104C, Carrboro, North Carolina. Its mailing address is Post Office Box ~~H, 459~~, Carrboro, North Carolina 27510-0459.

Statutory Authority G.S. 90-85.6.

SECTION .1300 - GENERAL DEFINITIONS

.1317 DEFINITIONS

The definitions of various terms used in these Rules are found in G.S. 90, Article 4A, and as follows:

- (1) **Approved School or College of Pharmacy.** A school or college of pharmacy accredited by the American Council on Pharmaceutical Education, or a foreign school with a professional pharmacy degree program of at least five years approved by the Board.
- (2) **Auxiliary Drug Inventory.** A secure, segregated, supplementary source for drugs to be used solely for the purpose of providing adequate drug availability when the pharmacy is closed or the pharmacist is unavailable.
- (3) **Board.** As defined in G.S. 90-85.3(b).
- (4) **Emergency Drugs.** Those drugs whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of unforeseen adverse changes in a patient's health or well-being.
- (5) **Executive Director.** The Secretary-Treasurer and Executive Director of the Board.
- (6) **Graduate of an Approved School or College of Pharmacy.** A person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy, or a person who has graduated from a foreign professional school of pharmacy and has successfully completed the Foreign Pharmacy Graduate Equivalency Examination offered by the National Association of Boards of Pharmacy and the Test of English as a Foreign Language.
- (7) **Indulgence in the Use of Drugs.** The use of

narcotic drugs or other drugs affecting the central nervous system or the use of intoxicating beverages to an extent as to deprive the user of reasonable self-control or the ability to exercise such judgment as might reasonably be expected of an average prudent person.

- (8) **Institutional Pharmacy.** A pharmacy maintained in a hospital, clinic, nursing home, rest home, sanatorium, non-federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.
- (9) **Limited Service Pharmacy Permit.** A pharmacy permit issued by the Board to an applicant that wishes to render in an institutional setting pharmaceutical services not limited to scope and kind but to time and conditions under which such services are rendered.
- (10) **Pharmacist.** Any person within the definition set forth in G.S. 90-85.3(p), including any druggist.
- (11) **Pharmacist-Manager.** The person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and regulations pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal or addenda thereto.
- (12) **Pharmacy.** Any place within the definition set forth in G.S. 90-85.3(q), including any apothecary or drugstore.
- (13) **Pharmacy Intern.** Any person who is duly registered with the Board under the internship program of the Board to acquire pharmacy experience or enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may, while under supervision, perform all acts constituting the practice of pharmacy.
- (14) **President.** The President of the Board.
- (15) **Two Years College Work.** Attendance at a college accredited by a recognized accreditation agency for two academic years of not less than eight and one-half months each and the completion of work for credit leading to a baccalaureate degree or its equivalent and that would permit the student to advance to the next class.
- (16) **Undergraduate Professional Degree in Pharmacy.** A B.S. or Pharm. D. degree.
- (17) **Vice-President.** The Vice-President of the Board.
- (18) **Ambulation Assistance Equipment.** Devices that aid in walking, excluding canes, crutches, and walkers.
- (19) **Diagnostic equipment.** Equipment used to record physiological information while a person goes about normal daily living or while asleep in order

to document a disease process. EPTs, thermometers, and cholesterol equipment are not included as diagnostic equipment.

- (20) HMES. Home medical equipment supplier.
- (21) Mobility equipment. Devices that aid a person in selfmovement, other than walking, including manual or power wheelchairs and scooters.
- (22) Oxygen and respiratory care equipment. Equipment or devices used to administer oxygen or other legend drugs, maintain viable airways and/or monitor cardio-respiratory conditions or events, including, but not limited to, compressed medical gases; oxygen concentrators; liquid oxygen; nebulizers; compressors; aerosol therapy devices; portable suction machines; nasal continuous positive airway pressure (CPAP) machines; Bi-phasic positive pressure devices (BiPAP); infant monitors, such as apnea monitors and cardio-respiratory monitors; positive and negative pressure mechanical ventilators; and pulse oximeters.
- (23) Place of residence. Any place used as an individual's temporary or permanent home.
- (24) Rehabilitation Services. Services and equipment required to maintain or improve functional status and general health as prescribed by the physician which are uniquely specified for each individual's lifestyle. The people involved in this process include the patient, caregiver, physician, therapist, rehabilitation equipment supplier and others who impact on the individual's life style and endeavors.
- (25) Rehabilitation environmental control equipment. Equipment or devices which permit a person with disabilities to control his or her immediate surroundings.
- (26) "Health Care Facility Pharmacy" means a pharmacy maintained in a hospital, clinic, nursing home, rest home, sanitarium, non-federal governmental institution, industrial health facility, or other like health service under the supervision of a pharmacist; or the central area in a hospital, clinic, or other health care facility where drugs are procured, stored, processed, or issued, or where pharmaceutical services are performed.
- (27) "Medication Administration Record" means a record of drugs administered to a patient.
- (28) "Medication Order" means an order for a prescription drug or other medication or a device for a patient from a person authorized by law to prescribe medications.
- (29) "Patient Medication Profile" means a list of all prescribed medications for a patient.
- (30) "Signature" means a written or electronic signature or computerized identification code.
- (31) "Drug review" or "Pharmaceutical care assessment" means an onsite review of a patient's or resident's record by a licensed pharmacist that involves interpretation and evaluation of the drug

therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.

- (32) "Consultant pharmacist" means a licensed pharmacist who provides pharmaceutical care that is primarily directed in the area of consultation to health care professionals regarding medication and treatment regimens, or drug reviews, to one or more of the following licensed facilities: nursing facilities, including those operated by a hospital or combination facilities; assisted living; family and adult care homes; intermediate care facilities for the mentally retarded; and group home for developmental disabled adults.

Statutory Authority G.S. 90-85.3; 90-85.6; 90-85.8; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.38; 90-85.40.

SECTION .1400 - HEALTH CARE FACILITIES

.1401 REGISTRATION AND PERMITS

(a) Registration Required. All places providing services which embrace the practice of pharmacy shall register with the North Carolina Board of Pharmacy as provided in General Statutes 90-85.21 and acquire a permit to do so. Application for such registration and permit shall be on forms provided by the Board. If the Board is satisfied that proper facilities and adequately trained and properly licensed personnel have been obtained which will assure compliance with all laws regulating the manufacture and distribution of drugs, the practice of pharmacy and the rules of the Board, a permit shall be issued by the Board attesting such registration.

(b) Exemptions. Nothing in these rules shall be construed to require the registration with the Board of those ~~hospitals or other~~ health care facilities in which there occurs only the administration of drugs.

(c) Separate Registration Required. The dispensing of drugs from separate locations ~~within an institution, owned by a health care facility,~~ such as satellite pharmacies, outside clinics, health maintenance organizations, or physician's offices owned by the health care facility ~~may shall~~ require separate registration, ~~registration.~~ A separate registration and permit is required for any pharmacy within an institution if any one of the following criteria exists:

- (1) The drugs dispensed at the location are ordinarily and customarily obtained from a source outside of the ~~institution;~~ health care facility;
- (2) The pharmacist manager is controlled and supervised from a source other than the ~~institutional~~ health care facility pharmacy; or
- (3) The routine activity at the location is dispensing drugs to outpatients.

(d) Any pharmacy that provides compounding or dispensing services to one or more health care facilities for individual patient administration bearing any labeled name other than that under which it is registered shall require a separate

registration.

(e) ~~(d)~~ Institutional pharmacies Health care facilities which do not have a pharmacy permit are required by law to secure their pharmaceutical services from a pharmacist holding a current license from the Board.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.32.

.1402 SUPERVISION OF DRUGS IN AREAS OUTSIDE OF PHARMACY

~~Drugs and devices connected with pharmacy practice located in the institution shall be under the supervision of the pharmacist employed or otherwise engaged by the institution.~~

Statutory Authority G.S. 90-85.6; 90-85.21.

.1403 INSTITUTIONAL PHARMACY DRUG INVENTORIES AND EMERGENCY KITS

~~(a) Auxiliary drug inventories are intended as a supplementary source for drugs when the pharmacy is closed or the pharmacist is not available. Emergency drugs kits are intended for use in a life threatening crisis, not as convenient supply. Acquiring drugs from the pharmacy when the pharmacy is not open as specified in this Rule should be rare and occur only if the drug desired is not available in the auxiliary drug inventory. The use of auxiliary drug inventories is required to prevent frequent entries into the pharmacy by non-pharmacy personnel.~~

~~(b) Except as provided in (c) of this Rule, only a pharmacist may have access to the institutional pharmacy inventory of drugs. Only authorized persons, as determined by the pharmacist manager, may obtain access to the auxiliary drug inventory by key or combination lock, and the inventory shall be sufficiently secure to deny access to unauthorized persons. The pharmacist manager shall, in connection with the appropriate committee of the institution, develop inventory listings of those drugs to be included in such inventories and shall insure that:~~

- ~~(1) The listed drugs are available therein and are properly labeled;~~
- ~~(2) Only prepackaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements;~~
- ~~(3) Whenever access to such inventory shall have been gained, written licensed prescriber's orders and proofs of use, if applicable, are provided;~~
- ~~(4) After each use of the auxiliary drug inventory, the pharmacy shall be notified in accordance with written policies;~~
- ~~(5) The contents of the auxiliary drug inventory are checked by an authorized person in accordance with written policies and procedures of the institution and inventoried at least monthly by pharmacy personnel; and~~
- ~~(6) Written policies and procedures are established~~

to implement the requirements of this Rule.

~~(c) When the pharmacist is absent from the institution, an authorized person, in accordance with written policies and procedures of the institution, may obtain from an institutional pharmacy inventory of drugs, a drug or medication necessary to administer to a bona fide patient in carrying out treatment and medication orders as prescribed by a licensed prescriber, when such drug is not available in floor supplies to meet the immediate need. This authorized person shall leave in the pharmacy, on a suitable form, a record of any drugs removed, showing the name of the patient, the name of the drug, the dosage size, the amount taken, the date and time, and the signature of the authorized person. A system shall be developed by the pharmacist manager and used by all authorized persons to document the entry. Such records shall be kept for three years. This Paragraph shall not preclude the use of technical personnel approved by the pharmacist manager from being present in the pharmacy at other than regular service hours and performing certain clerical, repackaging and distributive functions in connection with a system of institutional drug distribution according to written policies and procedures if the drugs so handled are not permitted to leave the pharmacy until all work so performed has been checked and certified as being correct by the pharmacist. This Paragraph shall not preclude the use of an emergency drug kit or auxiliary drug inventory as provided for in this Rule.~~

~~(d) Emergency drugs shall be stored in a container secured by a non-reusable, easily breakable seal, hereinafter referred to as the "emergency drug kit." The contents of the emergency drug kit shall be determined by the pharmacy and therapeutics committee or equivalent, and controlled substances in Schedules II through V shall not be allowed except as provided in Paragraph (5) of this Rule. The emergency drug kit shall be periodically reviewed and examined by a pharmacist not less than quarterly. The contents of the emergency drug kit shall be in compliance with all applicable federal, state and local laws, rules and regulations. A current list of the contents shall be attached to the exterior of the emergency drug kit. Storage and use of the emergency drug kit shall comply with the following:~~

- ~~(1) Storage of the emergency drug kit shall be in a secure, readily available location under the supervision of authorized persons.~~
- ~~(2) After the emergency drug kit is used and its seal broken, the pharmacy must be notified in accordance with written policies and procedures of the institution. The kit shall be replenished by an authorized person in accordance with written policies and procedures of the institution. Drugs and other articles used in the restocking and resealing of the emergency drug kit shall be under the supervision of the pharmacist. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the institution.~~
- ~~(3) The supplier shall indicate on the emergency~~

drug kit in a clearly visible place an expiration date which in no case shall be later than the date of the first item to expire.

- (4) ~~Items used from the emergency drug kit shall be entered on the patient's clinical record according to the standard procedure of the institution.~~

(e) ~~For the purpose of complying with state and federal law, emergency drugs that are controlled substances must be stored in a separate emergency kit. Such controlled substances emergency drug kit shall meet all of the requirements of this Rule applying to emergency drug kits and, in addition, be in compliance with the rules and regulations relative to controlled substances emergency drug kits.~~

Statutory Authority G.S. 90-85.6; 90-85.21.

.1404 MEDICATION IN INSTITUTIONAL EMERGENCY DEPARTMENTS

(a) ~~In those hospitals having 24 hour outpatient pharmacy service, all drugs dispensed to outpatients including emergency department patients must be dispensed by a pharmacist.~~

(b) ~~In those institutions not having 24 hour outpatient pharmacy service, or those institutions having no outpatient pharmacy service, drugs dispensed to emergency department patients when the outpatient pharmacy service is closed shall follow this procedure:~~

- (1) ~~All drugs shall be dispensed to a bonafide patient of the emergency department.~~
- (2) ~~The pharmacist manager shall be responsible for developing and supervising a system of control and accountability of all drugs administered in or dispensed from the emergency department.~~
- (3) ~~The institution's emergency department committee (or like group or person responsible for policy in that department) in conjunction with the pharmacist shall develop an emergency department formulary or drug list of those drugs which may be dispensed from the emergency department for patients receiving care in that department. This formulary or drug list shall consist of drugs of the nature and type to meet the immediate needs of emergency department patients, and quantities in each container should be limited to not more than a 24 hour supply.~~
- (4) ~~Such drugs shall be prepackaged in suitable safety closure containers and shall be appropriately prelabeled (including necessary auxiliary labels) by the pharmacist so as to provide for label information necessary for use as well as other information required by law.~~
- (5) ~~The physician, registered nurse under physician supervision, or person who is authorized to prescribe and dispense drugs pursuant to G.S. 90-18.1 or 90-18.2 shall comply with all regulations governing the dispensing of medications.~~
- (6) ~~A suitable and perpetual record of dispensing of~~

~~these medications shall be maintained. The pharmacist shall verify the accuracy of this record at least once a month.~~

- (7) ~~The physician shall sign or countersign in the medical record all orders for medications within 72 hours of the initiation of the order.~~

(e) ~~Records of controlled substances administered in emergency departments shall be kept in a manner to assure the accountability of such drugs in the institution.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

.1406 AUTOMATIC STOP ORDERS

~~In every institution where inpatient services exist, if the pharmacy and therapeutics committee or its equivalent has not adopted a policy stating a maximum period of time for the administration of medication ordered without a specific duration, the pharmacist manager shall determine a maximum period.~~

Statutory Authority G.S. 90-85.2; 90-85.3(r); 90-85.6.

.1408 INSTITUTIONAL DISCHARGE MEDICATION OPTION

~~Patients in the process of discharge from an institution, or their agent, may receive initial supplies of prescription drugs pursuant to a duplicate original order, that could be a photo copy, when a system is devised which meets the following criteria:~~

- (1) ~~The patient receiving the drug is a bonafide patient in the process of discharge from the institution or its clinics;~~
- (2) ~~The practitioner issuing the order has current staff privileges at the institution;~~
- (3) ~~The patient will receive the original prescription to be filled or refilled at the pharmacy of their choice;~~
- (4) ~~The duplicate original order, if used, is maintained on file in the institutional pharmacy for the statutory period and contains all items of information required for prescriptions under state and federal law and regulations;~~
- (5) ~~The name of the drug, brand or generic, whichever is actually dispensed, date of dispensing, strength, quantity and institution with telephone number is appropriately noted on the original prescription; and~~
- (6) ~~No controlled substance is dispensed pursuant to a duplicate original order.~~

Statutory Authority G.S. 90-85.6; 90-85.32.

.1410 PERSONNEL

(a) The health care facility pharmacy must be directed by a professionally competent and legally qualified pharmacist, hereinafter referred to as the pharmacist manager, who shall be responsible for meeting the requirements set forth by

Federal and State law, this Section, 21 NCAC 46 .2502, and other applicable rules of the Board. The pharmacist manager shall be thoroughly familiar with the specialized functions of health care facility pharmacy practice. The pharmacist manager shall be an employee of the health care facility or contracted for by the health care facility in which the pharmacy is located.

(b) The pharmacist manager shall be assisted by a sufficient number of pharmacists and supportive personnel as required to operate such pharmacy competently, safely, and to meet the needs of the patients of the health care facility.

- (1) The pharmacist manager shall ensure that an adequate number of qualified and trained pharmacists are employed. The Pharmacist Manager shall develop and implement written policies and procedures to specify the duties to be performed by such pharmacists.
- (2) The Pharmacist Manager shall ensure that a sufficient number of qualified, trained, and adequately supervised supportive personnel are employed to provide technical services, as well as ensuring that all such functions and activities are performed competently, safely, and without risk of harm to patients. The relationship between the supervising pharmacist and the supportive personnel shall be such that the pharmacist is fully aware of and responsible for all activities involved in the preparation and dispensing of medications prior to release to the patient, including the maintenance of appropriate records.
- (3) Secretarial and clerical support shall be provided to assist with record keeping, report submission and other administrative duties.

(c) After January 1, 1997, a consultant pharmacist must successfully complete an initial certification course for consultants which has been approved by the Board. Certification as a consultant with the Board is required to practice as a consultant pharmacist as defined in 21 NCAC 46 .1317(32).

(d) All consultant pharmacists must successfully complete a minimum 10 hour initial certification course approved by the Board for consultants that includes at least the following subject matters:

- (1) regulation and laws, both state and federal pertaining to services provided by consultant pharmacists;
- (2) policy and procedures;
- (3) professional responsibilities;
- (4) drug review/pharmaceutical care assessment;
- (5) ethics in consultant pharmacy; and
- (6) disease state management including drug therapy and monitoring.

(e) The consultant pharmacist must obtain not less than 10 hours of continuing education credits through contact

programs in any calendar year for recertification as defined in Rule .2201 of this Chapter. The programs for consultant recertification shall cover administrative, clinical, or regulatory topics related to consultant pharmacy.

Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.34.

.1411 RESPONSIBILITIES OF THE PHARMACIST MANAGER

(a) The pharmacist manager shall establish written procedures for the safe and effective distribution of pharmaceutical products. Procedures shall be periodically reviewed to assure they reflect current practice in the facility. A copy of such procedures shall be available in the pharmacy.

(b) The pharmacist manager shall be responsible for the safe and effective distribution, control, and accountability for drugs, including IV and irrigation solutions. The pharmacist manager may delegate responsibilities to other health care facility professional staff for ordering, administering, and accounting for pharmaceutical materials so as to achieve this purpose. Whenever there is a deviation from this Section, such action subjects the facility's pharmacy permit to action by the Board. In addition to 21 NCAC 46 .2502, the pharmacist manager shall, at a minimum, be responsible for:

- (1) the compounding, admixture, sterilization, labeling, and dispensing of parenteral medications in the health care facility, including relevant education and training of all pharmacy and nursing personnel involved in the preparation of parenteral medications;
- (2) the establishment of specifications or use of compendia specifications for procurement of all pharmaceuticals, including drugs, chemicals, and biologicals used in direct patient care, subject to approval of the appropriate committee of the health care facility;
- (3) participation in development and maintenance of a drug formulary for the health care facility;
- (4) participation in those aspects of pharmaceutical care that affect drug distribution and control;
- (5) preparing, packaging, compounding and labeling all drugs;
- (6) assuring that drugs are dispensed only by a pharmacist or other persons allowed by law to dispense; supportive pharmacy personnel are properly directed and supervised;
- (7) the development and implementation of policies and procedures to ensure that discontinued drugs; outdated drugs; drugs recalled; containers with worn, illegible, or missing labels; or products that are otherwise unusable are returned to the pharmacy for proper disposition in a timely manner;
- (8) maintaining access to patient records and reports as are required to ensure patient health, safety and welfare. These records and reports shall

include, at a minimum:

- (A) medication administration records;
 - (B) reports of suspected adverse drug reactions and medication variances;
 - (C) inventories of night cabinets and emergency kits/crash carts;
 - (D) the current formulary of drugs;
 - (E) a biennial controlled substances inventory;
 - (F) alcohol and flammable material reports as required by law when such material is procured by the pharmacy; and
 - (G) such other records and reports as may be required by law and rules of the Board of Pharmacy;
- (9) developing and implementing policies and procedures that effectively address the safeguarding and handling of all drugs and devices, as defined in G.S. 90-85.3(e), throughout the health care facility, or other locations where legend drug products are transferred, including medications that originate from a source outside the facility. When discrepancies in controlled substance counts are identified:
- (A) they shall be reviewed, and when appropriate, a report of this action, including steps taken to prevent recurrence, where possible, shall be provided to the pharmacy manager within 24 hours of occurrence. This report shall be maintained by the Pharmacist Manager; and
 - (B) recurring losses or mishandling of significant quantities of controlled substances shall be immediately reported to the Board and the Drug Enforcement Administration.
- (10) maintaining policies and procedures which require at least monthly inspections of patient care units or other areas of the health care facility where medications are dispensed, administered, or stored. A record of such inspections shall be maintained to verify that:
- (A) antiseptics, other drugs for external use, and disinfectants are stored separately from internal and injectable medications;
 - (B) drugs requiring special conditions for storage to assure stability are properly stored;
 - (C) all necessary and required security and storage standards are met;
 - (D) outdated or otherwise unusable drugs are identified, their distribution and administration prevented, and such are returned to the pharmacy for proper disposition;
 - (E) the distribution and administration of controlled drugs are adequately documented by pharmacy, nursing, and other involved services or personnel and are in accordance with applicable law;
 - (F) any investigational drugs in use are properly stored, distributed, and controlled;

- (G) emergency drugs, as approved by the medical staff, are in adequate and proper supply in the pharmacy or other designated areas of the health care facility;
 - (H) the verification of auxiliary stocks' inventory lists and accountability; and
 - (I) metric-apothecaries' weight and measure conversion tables and charts are available.
- (11) all drugs and devices dispensed by the pharmacy as defined in G.S. 90-85.3(e) which are ordered for and used within the health care facility, including drug samples and patient's personal medications.

Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.34.

.1412 PHYSICAL REQUIREMENTS

A health care facility pharmacy shall have within the facility it serves sufficient floor space allocated to it to ensure that drugs are prepared in sanitary, well lighted and enclosed places. It shall have sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations. In addition to the requirements of 21 NCAC 46 .1600, the equipment and physical facilities shall include the following:

- (1) Compounding and dispensing areas;
- (2) Physically separate parenteral solution additive area as described in Section .2800 - Sterile Parenteral Pharmaceuticals of this Chapter;
- (3) Receiving and storage areas;
- (4) Packaging and repackaging areas;
- (5) Office space sufficient to allow for administrative functions without interference with the safe compounding and dispensing of medications and security of the pharmacy;
- (6) Storage. All drugs shall be stored in designated areas within the pharmacy or decentralized pharmacy sufficient to provide proper sanitation, temperature, light, ventilation, moisture control, segregation, and security. Controlled substances shall be stored in compliance with applicable Federal and State laws and regulations. Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatile substances and such other laws, ordinances, or regulations that may apply;
- (7) Security. All areas occupied by the health care facility pharmacy, to include auxiliary drug supplies and unit dose carts, shall remain secured at all times.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.34.

.1413 ABSENCE OF PHARMACIST

(a) When a health care facility pharmacy is not open 24 hours a day, seven days a week, arrangements shall be made in advance by the pharmacist manager for provision of drugs to the medical staff and other authorized personnel of the health care facility after normal working hours by use of a night drug cabinet drug inventory as described in this Rule. In addition, one or both of the options in Subparagraphs (a)(1) or (2) of this Rule should be used to assure access to drugs in the absence of a pharmacist:

- (1) an "on call" pharmacist accessible to the facility during all absences;
- (2) a contractual arrangement with another health care facility, pharmacy, or pharmacist.

(b) A suitable and perpetual record of drugs or devices removed from night drug cabinets shall be maintained in the health care facility. The pharmacist manager shall periodically verify the accuracy of the records.

(c) Supportive personnel approved by the pharmacist manager may be present in the pharmacy at other than regular service hours to perform certain clerical, repackaging and distributive functions according to written policies and procedures if the drugs so handled are not permitted to leave the pharmacy until all work so performed has been checked and certified as being correct by the pharmacist.

(d) Drugs shall be distributed, in limited quantities, within a health care facility for the purpose of establishing and maintaining a supplementary inventory in night drug cabinets for use only when the pharmacy is closed. The Pharmacist Manager shall, in connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The pharmacist manager shall, at a minimum, be responsible to assure that:

- (1) access to such drug inventories be by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;
- (2) only specifically authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;
- (3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs should be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:
 - (A) the date of removal of the drug;
 - (B) the name, strength, dosage form, and quantity of drug removed;
 - (C) the name of the patient for whom the drug was ordered;
 - (D) the name or identification code of the authorized personnel removing the drug from inventory;

- (4) all drugs are inventoried no less than monthly. A system of accountability must exist for all drugs contained therein; and the purity, potency, and integrity, of the drug shall be preserved; and
- (5) written policies and procedures are established to implement the requirements of this Rule.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.32.

.1414 DRUG DISTRIBUTION AND CONTROL

(a) MEDICATION ORDERS.

- (1) Medications shall be dispensed from a health care facility pharmacy only upon receipt of a medication order. A mechanism shall be in place to verify the authenticity of the medication order. Allowable exceptions to this Rule (e.g., telephone, or verbal orders) shall be put in writing immediately and signed by the prescriber on the nurse's or pharmacist's record of these orders within 48 hours of initiation. Exceptions to this Rule are further defined in 21 NCAC 46 .1413.
- (2) All medication orders shall be received and reviewed by a pharmacist and, at a minimum, shall contain the:
 - (A) patient's name, location and other necessary identifying information;
 - (B) medication name, strength, dosage form, route of and directions for administration. In the absence of a facility policy on interpretation of routes of administration, the route of administration must be specified;
 - (C) date the order was written; and
 - (D) prescriber's signature (may include electronic signature or verification).
- (3) Medication orders for patients requiring continuous drug therapy shall be entered into a patient medication profile, either manual or automated. The medication profile shall, at a minimum, contain the:
 - (A) patient's name, location and important clinical data such as age, height, weight, sex, allergies, and additional information as appropriate;
 - (B) medication name, strength, dosage form, route of and directions for administration;
 - (C) medication start date;
 - (D) medication discontinuance date; and
 - (E) identification of pharmacist entering the medication order.
- (4) Abbreviations used in medication orders shall be agreed to, jointly adopted, and published by the medical, nursing, pharmacy, and medical records staff of the health care facility.
- (5) Medication orders shall be reviewed and discontinued or suspended, if appropriate, when the patient goes to the delivery room or operating

room. A method to protect the patient from indefinite, open-ended drug orders must be provided. The prescriber shall be notified in a timely manner that the order shall be stopped before such action takes place by one or more of the following:

- (A) the routine monitoring of patient's drug therapy by a pharmacist;
- (B) a health care facility-approved, drug class-specific, automatic stop order policy covering those drug orders not specifying a number of doses or duration of therapy; and/or
- (C) a health care facility-approved automatic cancellation of all drug orders after a predetermined time interval unless rewritten by the prescriber.

(6) The health care facility shall periodically credential practitioners who are authorized by law to prescribe medications for prescribing privileges within the facility.

(b) DEVICES. Devices shall be dispensed in accordance with Section .2600 of this Chapter.

(c) DISPENSING. In health care facilities with a 24 hour pharmacy, all dispensing shall be done by a pharmacist. In the absence of a pharmacist, Rule .1413 of this Section shall apply.

(d) LABELING.

- (1) All drugs dispensed from within a health care facility pharmacy shall be adequately labeled and identified up to the point of administration;
- (2) Whenever a drug is added to a parenteral admixture, it shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, expiration date, and expiration time, if applicable. For admixtures prepared outside the pharmacy, the pharmacy manager is responsible for developing policies and procedures for preparation and labeling.

(e) PARENTERAL MEDICATIONS. The dispensing of parenteral medications shall be done in accordance with Section .2800 of this Chapter - Sterile Parenteral Pharmaceuticals.

(f) Patient Care Unit Medication Inventories.

- (1) Non-controlled drugs may be stocked in limited quantities on a health care facility patient care unit when immediate availability is deemed essential to the patient's health and well-being. The Pharmacist Manager shall be responsible for developing an approved drug list for each health care facility location. Drugs shall be stored in a manner that prevents unauthorized access and shall only be administered to a patient of the health care facility pursuant to a medication order.
- (2) All controlled substances stocked within a health care facility that are not located within the facility's pharmacy or automated dispensing

device must be accompanied by a disposition form issued from the pharmacy. This document shall at a minimum contain:

- (A) the product name, strength, dosage form, and quantity supplied;
 - (B) the date transferred to the patient care unit by the pharmacy;
 - (C) the name of the pharmacy representative supplying, and the patient care unit representative receiving the drug;
 - (D) the date, time, and amount of the drug removed from the patient care unit stock for administration; and
 - (E) the patient name and identification of the person acquiring the product.
- (3) Exceptions to this Paragraph are made for use of automated dispensing devices provided that these devices meet all applicable rules for controlled substances contained therein.
- (4) When a dose of a controlled substance has been prepared for a patient but not used (i.e., refused, order canceled, or contaminated), it may be destroyed at the patient care unit. The destruction must be witnessed by a second responsible health care provider. Details of the event, along with the identification of the two who affected the destruction, shall be documented. If such record is separate from the disposition form, it shall be maintained uniformly with the corresponding disposition form.

(g) NIGHT CABINET DRUG INVENTORIES. Drugs shall be distributed, in limited quantities, within a health care facility for the purpose of establishing and maintaining a supplementary inventory for use only when the pharmacy is closed. The Pharmacist Manager shall, in connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The Pharmacist Manager shall, at a minimum, be responsible to assure that:

- (1) access to such drug inventories be by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;
- (2) only specifically authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;
- (3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs shall be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:
 - (A) the date of removal of the drug;
 - (B) the name, strength, dosage form, and quantity of drug removed;

- (C) the name of the patient for whom the drug was ordered;
- (D) the name or identification code of the authorized personnel removing the drug from inventory;
- (4) all drugs are inventoried no less than monthly. A system of accountability must exist for all drugs contained therein; and the purity, potency, and integrity, of the drug shall be preserved; and
- (5) written policies and procedures are established to implement the requirements of this Rule.
- (h) AUTOMATED DISPENSING DEVICES. Automated dispensing devices may be used for maintaining patient care unit medication inventories or for a patient profile dispensing system. The Pharmacist Manager shall, at a minimum, be responsible to assure that:
 - (1) only specifically authorized personnel, as indicated by written policies and procedures, may obtain access to the drug inventories;
 - (2) all drugs therein are inventoried no less than monthly. A system of accountability must exist for all drugs contained therein; and the purity, potency, and integrity, of the drug shall be preserved;
 - (3) the device provides records required by this Section and other applicable laws and rules;
 - (4) written policies and procedures are established to implement the requirements of this Rule; and
 - (5) requirements for controlled substances security are met.
- (i) EMERGENCY KITS. Drugs and devices may be provided in emergency kits for use by authorized personnel provided that:
 - (1) the Pharmacist Manager and the medical staff of the health care facility jointly determine the drugs and devices, by identity and quantity, to be included in the kit. Drugs and devices included in the kit shall be limited to those for emergency use only and are not to be used for any other purpose. The Pharmacist Manager shall, in conjunction with the medical staff of the health care facility, develop and implement written policies and procedures to ensure compliance with the provisions of these Rules;
 - (2) the emergency kit contains those drugs and devices which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent prolonged discomfort or risk of harm to patients;
 - (3) the emergency kit shall be stored in a secure, readily available location under the supervision of the nursing staff and sealed with a non-reusable, easily removable seal to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs and devices within them. The seal shall be checked for integrity
 - after each shift and a log shall be maintained;
- (4) the exterior of the emergency kit shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and is for use in emergencies only. In addition, a listing of the drugs and devices contained therein, including name, strength, and quantity of each drug or device shall be attached. Each emergency kit shall be inspected by a pharmacist or his designee every 30 days to check for expiration dates and the integrity of the seal;
- (5) all drugs and devices contained within the emergency kit shall be labeled, if applicable, with, at a minimum, the name, strength, lot number, manufacturer, and expiration date;
- (6) drugs and devices shall be removed from the emergency kit for administration to a patient only pursuant to a valid physician's order, by personnel authorized by the facility;
- (7) whenever an emergency kit is opened, the pharmacy shall be notified. The Pharmacist Manager or designee shall re-stock, re-seal, and return the kit to the unit within a reasonable length of time in order to prevent risk of harm to patients. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the health care facility. In the event the kit is opened in an unauthorized manner, the pharmacy and other appropriate personnel of the facility shall be notified; and
- (8) CONTROLLED DRUG EMERGENCY KITS. Emergency drugs that are controlled substances must be stored in compliance with 10 NCAC 45G .0410 of the North Carolina Controlled Substances Act.
- (j) RECORDS.
 - (1) The pharmacist manager shall, in addition to the requirements for preserving prescription orders as set forth in G.S. 90-85.26, develop a system of daily accountability for medication compounding and dispensing that shall permit the identification of the responsible pharmacist. Readily retrievable records of accountability shall be maintained for at least 30 days. At a minimum, this system shall identify all personnel who perform these activities and the pharmacist responsible for:
 - (A) interpretation and appropriateness of new medication orders;
 - (B) profile entry of new medication orders;
 - (C) dispensing of new medication orders including stat doses;
 - (D) daily cart fills;
 - (E) IV admixtures;
 - (F) compounded medications; and
 - (G) replenishment of pharmaceutical drugs and

- devices stocked in locations outside the pharmacy.
- (2) Medication occurrences resulting from the administration of an incorrect medication or dose shall be documented and reported immediately to the pharmacist manager. Documentation shall include pertinent chronological information and appropriate health care facility forms (i.e., incident report, medication variance reports, etc.), including the identity of individual(s) responsible. These documents shall be archived in a readily retrievable manner, open for inspection, for a period of three years.
 - (3) Upon notification of a death occurrence which indicates or suggests that an administered drug or device has caused or contributed to that death, the pharmacist manager shall retain all documents, labels, vial, supplies, substances and internal investigative reports relating to the event. All such items shall be maintained by the health care facility under the control of the pharmacist manager and shall be open to the Board of Pharmacy.
 - (4) The pharmacist manager shall maintain records of ordering, receiving, dispensing or transfer of controlled substances. These records shall include, but are not limited to the following:
 - (A) Invoices or other such documents verifying the ordering and receipt of controlled substances;
 - (B) Perpetual inventories of controlled substances transferred to patient care units and other sites as allowed by this Rule (i.e., automated dispensing devices, emergency kits, etc.). These inventories shall record the transfer date; location transferred to; the identity of the drug; strength, dosage form, and quantity transferred; transferring pharmacist's name;
 - (C) Disposition records required by Paragraph (g) of this Rule;
 - (D) A record of controlled substances dispensed directly to the patient to include the patient's name; date dispensed; dispensing pharmacist's name; name, strength, dosage form, and quantity of the drug dispensed. The records shall also document drugs returned and credited; and
 - (E) A perpetual inventory shall be maintained on all controlled substances awaiting destruction or return to a vendor.
 - (5) Automated systems may be used to collect and store information required by Subparagraph (j)(4) of this Rule provided such system allows for the immediate retrieval (via CRT display and hard-copy printout) of original medication order information and dispensing history consistent with criteria cited in 21 CFR .1306 and 10 NCAC 46 .2304.

- (6) With the exception of Subparagraph (j)(1) of this Rule, all records required by this Section shall be maintained for a period of three years. Such records shall be archived in a uniform manner, retrievable to the pharmacy within 48 hours, and open for review, copying, or seizure by a member or designated employee of the Board.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.32.

.1415 MEDICATION IN HEALTH CARE FACILITY EMERGENCY DEPARTMENTS

- (a) In those health care facilities having 24 hour outpatient pharmacy service, all drugs dispensed to outpatients including emergency department patients must be dispensed by a pharmacist.
- (b) When drugs are not otherwise available from a registered pharmacist, drugs may be dispensed by the physician, registered nurse under physician supervision, or a person authorized to prescribe and dispense drugs pursuant to G.S. 90-18.1 or 90-18.2 subject to the following:
 - (1) Drugs shall only be dispensed to a registered patient of the emergency department;
 - (2) The pharmacist manager shall be responsible for developing and supervising a system of control and accountability of all drugs administered in, or dispensed from the emergency department;
 - (3) The pharmacist manager, in conjunction with the appropriate committee responsible for policy in the emergency department, shall develop an emergency department formulary which may be dispensed from the emergency department for patients receiving care in that department. This formulary shall consist of drugs of the nature and type to meet the immediate needs of emergency department patients, and quantities in each container shall be limited to not more than a 24 hour supply or the smallest commercially-available quantity;
 - (4) Such drugs shall be prepackaged in suitable safety closure containers and shall be appropriately pre-labeled by the pharmacist to comply with 21 NCAC 46 .1414(i)(5) of this Chapter. Prior to dispensing, the following information shall be placed on the label:
 - (A) name, address, and telephone number of the health care facility pharmacy;
 - (B) dispensing date;
 - (C) full name of patient;
 - (D) brand or trade name, or in the absence of a brand name, the established name of the product dispensed;
 - (E) directions for use to the patient;
 - (F) name of physician prescribing and dispensing the product; and
 - (G) required precautionary or further accessory

cautionary information as may be desirable for proper use and safety to the patient;

- (5) A suitable and perpetual record of dispensing of all drugs, including drug samples and starter packages, shall be maintained as part of the pharmacy's records for three years. The Pharmacist Manager shall verify the accuracy of these records at least once a month. Such record shall, at a minimum, contain the following:

- (A) date dispensed;
- (B) patient's name;
- (C) physician's name; and
- (D) name of drug dispensed, strength, dosage form, quantity dispensed, and dose;

- (6) The physician shall sign all orders for medication within 72 hours of the initiation of the order.

(c) The physician, registered nurse under physician supervision, or person who is authorized to prescribe and dispense drugs pursuant to G.S. 90-18.1 or 90-18.2 shall comply with all regulations governing the dispensing of medications including patient counseling as defined in 21 NCAC 46 .2504 Patient Counseling.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.32.

.1416 REPACKAGING

(a) Drugs which are prepackaged from within a health care facility pharmacy for subsequent dispensing or administration shall be labeled to include:

- (1) the brand or trade name, strength, and quantity of drug;
- (2) identification of the manufacturer, and lot or control number;
- (3) the expiration date of the drug being repackaged; and
- (4) cautionary notations, if applicable.

(b) A batch number assigned by the pharmacy may be placed on the label in lieu of the manufacturer's name and lot number, provided that the pharmacy maintains a readily retrievable record which identifies, by batch number, the manufacturer and lot number of the drug.

(c) The pharmacy shall have and use proper facilities, qualified personnel, effectual operational practices, suitable packaging material, and adequate control procedures to assure that the purity, integrity, safety, and effectiveness of the drugs are not affected by such repackaging. All repackaging must be performed by or under the supervision of a pharmacist.

Statutory Authority G.S. 90-85.2; 90-85.6; 90-85.21; 90-85.32.

.1417 AUTOMATED DISPENSING DEVICES

Automated Dispensing Devices, such as but not limited to

Pyxis machines, may be utilized only in Health Care Facility Pharmacies and where a pharmacy permit exists provided that the pharmacist manager has developed satisfactory procedures to assure safe and effective patient therapy.

Statutory Authority G.S. 90-85.6; 90-85.32.

SECTION .1500 - ADMISSION REQUIREMENTS: EXAMINATIONS

.1505 EXAMINATION

(a) The examination shall consist of testing in the following areas:

- (1) theoretical examination including pharmacology, pharmacy, chemistry, mathematics and practice of pharmacy which may be reported separately or combined as one score.
- (2) practical pharmacy examination which may be reported separately or combined as one score including: ~~laboratory work~~, prescription reading and interpretation, drug identifications, determination of errors and omissions, pharmaceutical jurisprudence, patient counseling, drug utilization review, and such other reasonable tests of the applicant's ability to translate professional knowledge into terms of actual practice as the Board may see fit.

(b) For the purpose of grading or rating, the answers, which shall be legible, shall be valued by marks or points based on their importance, as determined by the judgment of the examiners.

(c) In order to pass, an over-all average of 75 is required on both the practical and the theoretical sections. Candidates who obtain a 75 on the practical pharmacy section or a 75 average on the theoretical section are deemed to have passed the respective section provided that the candidate obtains a passing score on the remaining section in North Carolina within the next following two calendar years. A candidate who fails to pass both sections of the examination in the two calendar year period must retake and pass both sections of the examination.

Statutory Authority G.S. 90-85.15; 90-85.16.

SECTION .1600 - LICENSES AND PERMITS

.1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) Adequate qualified personnel has been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) Such personnel shall be maintained during that

- period for which the permit is issued.
- (3) Any and all unlicensed clerks have been instructed that they may render pharmaceutical service only as an aid to and under the immediate supervision of a registered pharmacist.
 - (4) The following minimum technical equipment is maintained:
 - (A) Graduates. Capable of accurately measuring volumes from 1 ml to at least 500 ml;
 - (B) Mortars and pestles:
 - (i) one -- glass;
 - (ii) one -- "Wedgwood";
 - (C) Stirring Rods. Two -- assorted sizes, glass or rubber;
 - (D) Ointment slab or suitable substitute;
 - (E) Class A prescription or electronic balances and appropriate weights, suitable for all required weighings, at least one of which must be sensitive to six mg;
 - (F) Suitable facilities for recording and filing prescriptions as required by G.S. 90-85.26;
 - (G) Spatulas:
 - (i) stainless steel, at least three assorted sizes;
 - (ii) non-metallic, one of any size;
 - (H) Useable Supplies. Equipped with safety closures where required:
 - (i) prescription bottles, 1 to 32 fluid ounces;
 - (ii) dropper bottles, 1/2 to 2 fluid ounces;
 - (iii) assorted pill and tablet containers;
 - (iv) empty capsules, No. 00 to No. 3;
 - (v) powder papers;
 - (vi) ointment jars, assorted;
 - (vii) prescription labels;
 - (viii) all appropriate auxiliary labels;
 - (I) Heating apparatus;
 - (J) Refrigerator;
 - (K) Reference library, as follows:
 - (i) the latest edition of the United States Pharmacopoeia (USP) and National Formulary and supplements thereto or a standard commentary thereon;
 - (ii) a copy of the pharmacy laws of North Carolina, including the North Carolina Controlled Substances Act and the rules adopted pursuant thereto, and the North Carolina Pharmacy Practice Act and the rules of the Board;
 - (iii) a copy of the Federal Controlled Substances Act and the regulations adopted pursuant thereto;
 - (iv) a Schedule V controlled substances register (where these preparations are sold other than on prescriptions);
 - (v) a medical dictionary;
 - (vi) current editions of generally accepted reference books on the following subjects:
 - (II) clinical pharmacology, and
 - (III) USP Dispensing Information or its equivalent,
 - (IV) if IV admixture services are provided, a reference on Parenteral Incompatibilities.
 - (5) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water, is adequately lighted, and is kept in a clean, orderly, and sanitary condition.
 - (6) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.
 - (b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by a statute and by other rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:
 - (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;
 - (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
 - (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
 - (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications.
- The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21. Provided, however, that this Rule shall not apply to the occasional mailing of prescription drugs to bona fide customers of any pharmacy when the practitioner-pharmacist-patient relationship is present.
- (c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of .0300 of this Chapter) unless such pharmacy facility:
 - (1) is physically separated from such other business;

- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(e) Upon application, the Board may issue and renew multiple permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

Statutory Authority G.S. 90-85.6; 90-85.21.

.1602 LICENSE BY RECIPROCITY

(a) An applicant for licensure without examination, must have:

- (1) Originally been licensed as a pharmacist by an examination equivalent to the North Carolina examination specified in Rule .1505(a)(1) of this Chapter;
- (2) Achieved scores on an equivalent examination, such as the NABPLEX examination, which would qualify for licensure in this state at ~~that~~ the time if said applicant was licensed by of examination after June 1, 1980;
- (3) Been licensed by a state which deems licensees from this state to be equivalent to the extent that they are suitable for licensure in that state without further substantial examination; and
- (4) Passed an examination equivalent to the North Carolina examination specified in Rule .1505(a)(2) of this Chapter or, in lieu of such an examination, have practiced pharmacy for at least one year, provided that the one year of pharmacy practice is determined by the Board to be the substantial equivalent to passing the practical section of the North Carolina examination.

(b) Negative determination of any of the criteria in this Rule would preclude licensure under G.S. 90-85.20.

Statutory Authority G.S. 90-85.6; 90-85.20.

.1603 WHEN PERMITS REQUIRED

A permit issued by the Board is required for a new pharmacy or a change of ownership of an established pharmacy ~~to a successor business entity which results in a change in the controlling of more than 50 percent interest in the pharmacy, except as provided in Rule .1604 of this Section.~~

Statutory Authority G.S. 90-85.6; 90-85.21.

.1604 TRANSFER OF PERMITS ALLOWED

(a) A valid pharmacy permit may be transferred and a new permit is not required ~~where a change of ownership of a pharmacy with a permit results from a transfer to or from a sole proprietorship, a partnership, a corporation, or any other business entity if the transfer does not involve the acquisition of more than 50 percent interest in the pharmacy by any party who was not a signatory on the original pharmacy permit application.~~ in the following situations:

- (1) where the change of ownership does not involve the acquisition of more than 50 percent interest in the pharmacy; or
- (2) the pharmacy is owned by a publicly traded corporation which maintains ownership of the pharmacy; or
- (3) the pharmacy is owned by a corporation which is a wholly-owned subsidiary of a publicly-traded corporation and there is no change in the parent-subsidiary relationship.

(b) A transfer of ownership of a permit is not allowed where the permit is involved in a pending disciplinary proceeding.

Statutory Authority G.S. 90-85.6; 90-85.21.

.1607 OUT-OF-STATE PHARMACIES

(a) In order to protect the public health and safety and implement G.S. 90-85.21A, the following provisions apply to out-of-state pharmacies that ship, mail, or deliver in any manner a dispensed legend drug into this State.

(b) Such pharmacies shall:

- (1) Pay a fee of two hundred fifty dollars (\$250.00) for each original registration and thereafter pay a fee of one hundred twenty-five dollars (\$125.00) for annual renewal of each registration;
- (2) Maintain, in readily retrievable form, records of prescription drugs dispensed to North Carolina residents;
- (3) Supply all information requested by the Board in carrying out the Board's responsibilities under the statutes and rules pertaining to out-of-state pharmacies;
- (4) During the pharmacy's regular hours of operation but not less than six days per week, for a

minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients and pharmacists at the pharmacy who have access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;

- (5) Comply with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications;
- (6) Develop and acknowledge the existence of policies governing:
 - (A) normal delivery protocols and times;
 - (B) the procedure to be followed if the patient's medication is not available at the out-of-state pharmacy, or if delivery will be delayed beyond the normal delivery time;
 - (C) the procedure to be followed upon receipt of a prescription for an acute illness, which shall include a procedure for delivery of the medication to the patient from the out-of-state pharmacy at the earliest possible time (such as courier delivery), or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time; and
 - (D) the procedure to be followed when the out-of-state pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mail prescription drugs become available;
- (7) Disclose the location, names, and ~~titles~~ ~~titles~~ of all principal corporate officers, if incorporated, and if unincorporated, ~~partners~~ ~~partners~~, or owners of the pharmacy. Disclose the names and license numbers of all pharmacists dispensing prescription legend drugs to an ultimate user in this State, the names and, if available, license or registration numbers of all supportive personnel employed by the out-of-state pharmacy who assist such pharmacists in such dispensing. A report containing this information shall be made on an annual basis and within 30 days of each change of any principal office, pharmacist-manager of any location dispensing prescription legend drugs to an ultimate user in this State, principal corporate officer if incorporated, and if unincorporated, partner or owner of the pharmacy. A new registration shall be required for a change of ownership of an established pharmacy to a successor business entity which results in a change in the controlling interest in the pharmacy;
- (8) Submit evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the state in which the pharmacy is located. Such evidence shall con-

sist of one of the following:

- (A) a copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the state in which the pharmacy is located; or
 - (B) a letter from the regulatory or licensing agency of the state in which the pharmacy is located certifying the pharmacy's compliance with the pharmacy laws of that state;
- (9) Designate a resident agent in North Carolina for service of process. Any such out-of-state pharmacy that does not so designate a resident agent shall be deemed to have appointed the Secretary of State of the State of North Carolina to be its true and lawful attorney upon whom process may be served. All legal process in any action or proceeding against such pharmacy arising from shipping, mailing or delivering prescription drugs in North Carolina shall be served on the resident agent. In addition, a copy of such service of process shall be mailed to the out-of-state pharmacy by certified mail, return receipt requested, at the address of the out-of-state pharmacy as designated on the registration form filed with the Board. Any out-of-state pharmacy which does not register in this State, shall be deemed to have consented to service of process on the Secretary of State as sufficient service.
- (c) The facilities and records of an out-of-state pharmacy shall be subject to inspection by the Board; provided however, the Board may accept in lieu thereof satisfactory inspection reports by the licensing entity of the state in which the pharmacy is located.
- (d) An out-of-state pharmacy shall comply with the statutes and regulations of the state in which the pharmacy is located.
- (e) Any person who ships, mails, or delivers prescription drugs to North Carolina residents from more than one out-of-state pharmacy shall register each pharmacy separately.
- (f) Prior to original registration, a pharmacist who is an authorized representative of the pharmacy's owner must appear personally at the Board office on the first Monday of the month, the Monday before the monthly Board meeting, or such other time as scheduled with the Board's staff. Such authorized pharmacist may represent all pharmacies having the same ownership.
- (g) An out-of-state pharmacy shall report to the Board information that reasonably suggests that there is a probability that a prescription drug or device dispensed from such out-of state pharmacy has caused or contributed to the death of any patient. The report shall be filed in writing on a form provided by the Board within 14 days of the pharmacy becoming aware of the death. The Board may not disclose the identity of any person or entity making the report, except when it is necessary to protect life or health of any person. No such report in possession of the Board shall be discoverable or admissible into evidence or otherwise used

in any civil action involving private parties.

(h) The Board may, in accordance with Chapter 150B of the General Statutes, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew registration to an out-of-state pharmacy if such pharmacy has:

- (1) made false representations or withheld material information in connection with obtaining registration;
- (2) been found guilty of or plead guilty or nolo contendere to any felony in connection with the practice of pharmacy or the distribution of drugs;
- (3) made false representations in connection with the practice of pharmacy that endanger or are likely to endanger the health or safety of the public, or that defraud any person;
- (4) failed to comply with this Rule and G.S. 90-85.21A;
- (5) been the subject of a negligence complaint resulting from the dispensing of prescription drugs to a resident of North Carolina and based on an investigation of such complaint been found to be negligent:
 - (A) by the Board of Pharmacy of the state in which the pharmacy is located;
 - (B) by the North Carolina Board of Pharmacy if the Board of Pharmacy of the state where the pharmacy is located failed to initiate an investigation of such complaint within 45 30 days after referral of the complaint from the North Carolina Board of Pharmacy; or
 - (C) by the North Carolina Board of Pharmacy if the Board of Pharmacy of the state where the pharmacy is located initiates an investigation of such complaint within 45 30 days, but later advises the North Carolina Board that it will not make a determination of negligence or that it has made no determination of the issue of negligence within one year 180 days after referral of the complaint, complaint and has discontinued any active investigation or proceeding for such determination. In any disciplinary proceeding based on negligence, the standard of practice shall be that applicable in the state in which the pharmacy is located. In disciplinary proceedings pursuant to Part (h)(5)(A) of this Rule, the Board shall adopt the findings of negligence by the Board of Pharmacy of the state in which the pharmacy is located as part of the Board's final decision without producing its own evidence of negligence.

(i) An out-of-state pharmacy shall notify the Board within five days of receipt of any order or decision by a Board of Pharmacy imposing disciplinary action on the pharmacy. Notwithstanding the provisions of Paragraph (h) of this Rule, if the permit or registration in the state where the

pharmacy is located is suspended or revoked, then the pharmacy's registration in North Carolina will be immediately suspended or revoked for the same period of time.

(j) An out-of-state pharmacy registration shall expire on December 31 of each year.

Statutory Authority G.S. 90-85.6; 90-85.21A; 90-85.26; 90-85.28; 90-85.29; 90-85.30; 90-85.32.

SECTION .1700 - DRUGS DISPENSED BY NURSE OR PHYSICIAN'S ASSISTANT

.1701 DISPENSING BY REGISTERED NURSE OR PHYSICIAN'S ASSISTANT

~~This Section governs dispensing by a registered nurse or physician's assistant as authorized by G.S. 90-18.1 and 90-18.2.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

.1702 DISPENSING SUPERVISED BY LICENSED PHARMACIST

~~A registered nurse or assistant to a physician who is authorized by the Board of Medical Examiners to dispense drugs shall be deemed to be under the supervision of a licensed pharmacist if:~~

- ~~(1) the place where such drugs are dispensed holds a current pharmacy permit from the Board as required by G.S. 90-85.21;~~
- ~~(2) the pharmacist provides written procedures for the packaging, labeling, and delivering of drugs dispensed as well as maintenance of appropriate records, as provided in Rule .1705 of this Section;~~
- ~~(3) the pharmacist reviews all records of drugs dispensed at least daily for each day when dispensing takes place; and~~
- ~~(4) the pharmacist holds himself available for consultation in person, by telephone, or other means of direct communication at all times when drugs are dispensed.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

.1703 DRUGS TO BE DISPENSED

~~Such drugs as may be dispensed by the registered nurse or assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to those drugs on the formulary approved by the Board of Medical Examiners which lists drugs the registered nurse or assistant to a physician is authorized to prescribe. All drugs not listed in the formulary which might be prescribed by the physician supervising the registered nurse or assistant to the physician must be dispensed personally by the prescribing physician, by the pharmacist, or by a person acting under the supervision of the pharmacist.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

Alternative 1

.1703 DRUGS TO BE DISPENSED

(a) Such drugs as may be dispensed by the registered nurse or assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to those drugs in the formulary approved by the Board of Medical Examiners written standing protocols approved and signed by both the supervising physician(s) and the registered nurse and maintained in each approved practice site. The written standing protocols shall include drugs that may be prescribed, ordered and implemented by the registered nurse, which lists drugs the registered nurse or assistant to a physician is authorized to prescribe. All drugs not listed in the formulary written standing protocols which might be prescribed by the physician supervising the registered nurse or assistant to the physician must be dispensed personally by the prescribing physician, by the pharmacist, or by a person acting under the supervision of the pharmacist.

(b) Such drugs as may be dispensed by an assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to the dispensing of drugs that are delegated by the supervising physician.

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

Alternative 2

.1703 DRUGS TO BE DISPENSED

(a) Such drugs as may be dispensed by the registered nurse or assistant to a physician who is authorized to prescribe or dispense drugs shall be limited to those drugs on the formulary approved by the Board of Medical Examiners which lists drugs the registered nurse or assistant to a physician is authorized to dispense.

(b) All drugs not listed in the formulary which might be prescribed by the physician supervising the registered nurse or assistant to the physician must be dispensed personally by the prescribing physician, by the pharmacist, or by a person acting under the supervision of the pharmacist.

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

.1704 PREPACKAGING OF DRUGS DISPENSED

~~All drugs dispensed by the registered nurse or assistant to the physician shall be prepackaged in suitable safety closure containers and shall be appropriately prelabeled (including necessary auxiliary labels) by the pharmacist with all information required by law except the name of the patient and the directions for use. The name of the patient and directions for use of the drug shall be placed on the label by the registered nurse or assistant to the physician at the time it is delivered to the patient or his agent.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6.

.1705 RECORDS OF DISPENSING

~~A suitable and perpetual record of dispensing of all drugs shall be maintained in the facility where such drugs are dispensed. The pharmacist shall verify the correctness of this record daily. The record of drugs dispensed shall be open to inspection at reasonable hours to agents of the Board of Medical Examiners and the Board.~~

Statutory Authority G.S. 90-18.1; 90-18.2; 90-85.6; 90-85.36.

SECTION .1800 - PRESCRIPTIONS

.1810 CHANGES IN PRESCRIPTION ORDERS

Any change in a prescription order from that originally issued by a prescriber constitutes the practice of pharmacy.

Statutory Authority G.S. 90-85.6; 90-85.32.

.1811 EXCESSIVE DISPENSING OF PRESCRIPTION DRUGS

Pharmacists shall not dispense and permit holders shall not allow a pharmacist to dispense prescription drugs at such an excessive rate per hour or per day as to pose a danger to the public health or safety.

Statutory Authority G.S. 90-85.6; 90-85.32.

SECTION .1900 - FORMS

.1910 CERTIFICATE OF EXPERIENCE OUTSIDE NORTH CAROLINA

~~The form for certification of experience outside North Carolina is entitled "Certificate of Experience Outside North Carolina". This form requires information on identification, length and location of experience and the responsible pharmacist.~~

Statutory Authority G.S. 90-85.6; 90-85.15.

SECTION .2100 - ELECTIONS

.2104 COMMITTEE ON NOMINATIONS

The Board may appoint an advisory committee on nominations in January of each year. Members of this committee shall submit at least two names of eligible candidates for each position to be filled on the Board and on the device and medical equipment subcommittee by March 1 for the next election.

Statutory Authority G.S. 90-85.7; 90-85.22.

SECTION .2400 - DISPENSING IN HEALTH DEPARTMENT

.2403 DRUGS AND DEVICES TO BE DISPENSED

(a) Pursuant to the provisions of G.S. 90-85.34(a)(3), prescription drugs and devices included in the following general categories may be dispensed by registered nurses in local health department clinics when prescribed for the indicated conditions:

- (1) Anti-tuberculosis drugs, as defined by the latest edition of Drug Facts and Comparisons, as published by Facts and Comparison Div., J.B. Lippincott Co., or as recommended by the Tuberculosis Control Branch of the North Carolina Division of Health Services, when used for the treatment and control of tuberculosis;
- (2) Anti-infective agents used in the control of sexually-transmitted diseases as recommended by the United States Centers for Disease Control;
- (3) Natural or synthetic hormones and contraceptive devices when used for the prevention of pregnancy;
- (4) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions; and
- (5) Vitamin and mineral supplements.

(b) Regardless of the provisions set out in this Rule, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code 801 through 904, or regulations enacted pursuant to that Act, 21 CFR 1300 through 1308, or by the North Carolina Controlled Substances Act, G.S. 90-86 through 90-113.8, may be dispensed by registered nurses pursuant to G.S. 90-85.34A.

Statutory Authority G.S. 90-85.6; 90-85.34A.

SECTION .2500 - MISCELLANEOUS PROVISIONS

.2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

(a) The pharmacist-manager has the responsibility to assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.

(b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but must be present for at least one-half the hours the pharmacy is open or 32 hours a week.

(c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager is responsible for completing an inventory of all controlled substances in the pharmacy within ten days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.

(d) The pharmacist-manager has the responsibility to develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the

earliest practicable time.

(e) The pharmacist-manager shall maintain complete authority and control over any and all keys to the pharmacy and is responsible for the ultimate security of the pharmacy.

(f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in these rules.

(g) A person cannot serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies, which will be considered by the Board on an individual basis upon application by the pharmacist-manager.

(h) When a pharmacy is to be closed permanently, it is the responsibility of the pharmacist-manager to inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within ten days of the closing date. It is the responsibility of the pharmacist-manager, jointly held with the pharmacy's owner (if the owner is other than the pharmacist-manager), to transfer prescription files to another pharmacy for maintenance of patient therapy and to inform the public of such transfer by posted notice or otherwise. Controlled substance records shall be retained for the period of time required by law.

(i) It is the responsibility of the pharmacist-manager to prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.

(j) It is the pharmacist-manager's responsibility to separate from the dispensing stock all drug products more than six months out of date.

(k) The owner representative or pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event.

(l) The Board may not disclose the identity of an owner representative or pharmacist-manager who makes a report under Paragraph (k) of this Rule, except in connection with G.S. 90-85.36. No report made under Paragraph (k) of this Rule shall be discoverable or admissible into evidence or otherwise used in any civil action involving private parties except as provided by G.S. 90-85.36.

(m) In any Board proceeding, the Board shall consider compliance with Paragraph (k) of this Rule as a mitigating factor and noncompliance with Paragraph (k) of this Rule as an aggravating factor.

Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.25.

.2504 PATIENT COUNSELING

(a) "Patient Counseling" shall mean the effective communication of information, as defined in this Rule, to the

patient or representative in order to improve therapeutic outcomes by maximizing proper use of prescription medications, devices, and medical equipment. This Rule shall apply to pharmacists and to registrants under G.S. 90-85.21. All provisions of this Rule shall apply to device and medical equipment permit holders, except Subparagraph (a)(8) of this Rule and except where otherwise noted. Specific areas of patient counseling include, but are not limited to, those matters listed in this Rule that in the exercise of the pharmacist's or registrant's professional judgment are considered significant:

- (1) name, description, and purpose of the medication;
- (2) route, dosage, administration, and continuity of therapy;
- (3) special directions for use by the patient;
- (4) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- (5) techniques for self-monitoring drug therapy;
- (6) proper storage;
- (7) prescription refill information; and
- (8) action to be taken in the event of a missed dose.

(b) An offer to counsel shall be made on new or transfer prescriptions at the time the prescription is dispensed or delivered to the patient or representative. Ancillary personnel may make the offer to counsel, but the pharmacist or registrant must personally conduct counseling if the offer is accepted. Counseling by device and medical equipment permit holders must be conducted by personnel proficient in explaining and demonstrating the safe and proper use of devices and equipment. The person in charge shall be responsible for ensuring that all personnel conducting counseling are proficient in explaining and demonstrating the safe and proper use of devices and equipment and for documenting the demonstration of such proficiency. The offer shall be made orally and in person, whenever practicable, or through access to a telephone service that is toll-free for long-distance calls. A pharmacist or registrant whose primary patient population is accessible through a local measured or toll-free exchange need not be required to offer toll-free service. Professional judgment shall be exercised in determining whether or not to offer counseling for prescription refills. An offer to counsel shall be communicated in a positive manner to encourage acceptance.

(c) In order to counsel patients effectively, a reasonable effort shall be made to obtain, record, and maintain, if significant, patient information, including, but not limited to:

- (1) name, address, telephone number;
- (2) date of birth (age), gender;
- (3) medical history:
 - (A) disease state(s),
 - (B) allergies/drug reactions,
 - (C) current list of non-prescription and prescription medications, devices, and medical equipment.

- (4) pharmacist, registrant, or permit holder comments relevant to the individual's drug therapy.

A "reasonable effort" shall mean a good faith effort to obtain from the patient or representative the foregoing patient information. Ancillary personnel may collect, record, and obtain patient profile information, but the pharmacist, registrant, or person in charge of the facility holding the device and medical equipment permit must review and interpret patient profile information and clarify confusing or conflicting information. Professional judgment shall be exercised as to whether and when individual patient history information should be sought from other health care providers.

(d) Once patient information is obtained, this information shall be reviewed and updated by the pharmacist, registrant, or person in charge of the facility holding the device and medical equipment permit before each prescription is filled or delivered, typically at the point-of-sale or point of distribution to screen for potential drug therapy problems due to:

- (1) therapeutic duplication;
- (2) drug-disease contraindication;
- (3) drug-drug interactions, including serious interactions with prescription or over-the-counter drugs;
- (4) incorrect drug dosage or duration of drug treatment;
- (5) drug-allergy interactions; and
- (6) clinical abuse/misuse.

(e) Unless refused by the patient or representative, patient counseling shall be provided as follows:

- (1) counseling shall be "face to face" by the pharmacist, registrant, or personnel of a device and medical equipment permit holder when possible or appropriate. If this is not possible, a reasonable effort shall be made to counsel the patient or representative;
- (2) alternative forms of patient information may be used to supplement patient counseling;
- (3) patient counseling, as described in this Rule, shall also be required for outpatient and discharge patients of hospitals, health maintenance organizations, health departments, and other institutions; however, compliance with this Rule in locations in which non-pharmacists are authorized by law or regulation to dispense may be accomplished by such authorized non-pharmacists; and
- (4) patient counseling, as described in this Rule, shall not be required for inpatients of hospitals or other institutions where a nurse or other licensed health care professional administers the medication(s).

(f) Pharmacies that distribute prescription medication by mail, and where the practitioner-pharmacist-patient relationship does not exist, shall provide counseling services for recipients of such medication in accordance with this Rule.

(g) Records resulting from compliance with this Rule, including documentation of refusals to receive counseling, shall be maintained for three years in accordance with Section .2300 of this Chapter.

(h) Personnel of device and medical equipment permit holders shall give written notice of warranty, if any, regarding service after the sale. The permit holder shall maintain documentation demonstrating that the written notice of warranty was given to the patient.

(i) Offers to counsel and patient counseling for inmates need not be "face to face," but rather, may be conducted through a correctional or law enforcement officer or through printed material. A pharmacist, registrant or a device and medical equipment permit holder dispensing drugs or devices or delivering medical equipment to inmates need not comply with Paragraph (c) of this Rule. However, once such patient information is obtained, the requirements of Paragraph (d) of this Rule shall be followed.

Statutory Authority G.S. 90-85.6; 90-85.21; 90-85.22; 90-85.32; 42 U.S.C. 1396r-8(g).

.2506 ADMINISTRATION OF DRUGS

A pharmacist is authorized to administer drugs, pursuant to G.S. 90-85.3(r), upon successful completion of a drug administration course approved by the Board and upon a showing before the Board of competency to administer drugs. Documentation of successful course completion must be kept on file at the pharmacist's practice site. Any administration of drugs in a hospital or other similar institution shall be under a protocol established by the medical staff and nursing administration.

Statutory Authority G.S. 90-85.3; 90-85.6.

SECTION .2600 - DEVICES

.2602 ORDERS

Devices as defined in G.S. 90-85.3(e), shall be dispensed to outpatients only pursuant to an order from a practitioner. Such orders shall comply in all pertinent respects with G.S. 106-134.1(a) and ~~G.S. 106-134.4(a) and (b).~~ Use of devices for outpatients shall be in compliance with G.S. 90-85.3(t).

Statutory Authority G.S. 90-85.3(e),(r); 90-85.6; 90-85.22.

.2609 REHABILITATION EQUIPMENT

(a) Rehabilitation equipment suppliers shall demonstrate to the Board's satisfaction a working knowledge of the services provided and how they relate to each patient's goals as prescribed by the physician.

(b) Rehabilitation equipment suppliers shall:

- (1) Actively solicit information from the physician, physical therapist, occupational therapist, registered nurse and other medical or educational personnel, as to the results of their assessment

- (2) and evaluation of the patient's physical, functional and associated needs as well as the specific goals to be met by the enabling technology;
- (2) In close consultation with the referring health professional(s), patient, patient's family and other primary care providers, delineate the appropriate choices of commercially available and custom fabricated equipment to meet the specified needs of the patient;
- (3) Participate in the measurement of the patient, utilizing appropriate instruments and techniques to assure the fit and function of the selected equipment;
- (4) Deliver, fit and adjust the prescribed equipment;
- (5) Instruct the patient and family in the safe and proper use and care of the equipment provided;
- (6) Provide service and support for the equipment delivered through knowledgeable, skilled and highly trained service personnel and within 72 hours, provide a response to patient requests for repair service on equipment supplied;
- (7) Provide a specific, written statement of warranty on the equipment provided, including commercial warranties and those for adapted or custom fabricated items;
- (8) Maintain liability insurance of ~~up to~~ at least one million dollars (\$1,000,000) worth of coverage and when involved in the design, fabrication or substantial modification of commercially available equipment, also maintain product liability insurance; and
- (9) Utilize extensive, written, quality assurance procedures including, but not limited to:
 - (A) Reviewing custom designed and fabricated equipment and interfacing techniques with commercial equipment to assure compatibility and safety;
 - (B) Understanding the properties of the materials being used in custom designed and modified equipment to assure long term durability;
 - (C) Documenting goals and objectives of the referring medical or education personnel, as well as short and long term effectiveness of the equipment in meeting those goals and objectives; and
 - (D) Documenting complaints and problems as required in Rule .1608(a)(12) of this Chapter.

Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.

.2611 MEDICAL EQUIPMENT

(a) Medical equipment suppliers shall demonstrate to the Board's satisfaction a working knowledge of the services provided and how they relate to each patient's goals as prescribed by the physician.

(b) Medical equipment suppliers shall:

- (1) Actively solicit and document information from the physician or other medical personnel as to the results of their assessment and evaluation of the patient's physical, functional and associated needs, and the specific goals to be met by the equipment delivered as well as the effectiveness of the equipment in meeting those goals and objectives;
- (2) In close consultation with the referring health professional(s), patient, patient's family and other primary care providers, delineate the appropriate choices of commercially available and custom fabricated equipment to meet the specified needs of the patient;
- (3) Participate in the measurement of the patient, utilizing appropriate instruments and techniques to assure the fit and function of the selected equipment;
- (4) Deliver, fit and adjust the prescribed equipment;
- (5) Instruct the patient and family in the safe and proper use and care of the equipment provided;
- (6) Provide service and support for the equipment dispensed through knowledgeable, skilled and highly trained service personnel and within 72 hours, provide a response to patient requests for repair service on equipment supplied;
- (7) Provide a specific, written statement of warranty on the equipment provided, including commercial warranties and those for adapted or custom fabricated items;
- (8) Maintain liability insurance of at least one million dollars (\$1,000,000) worth of coverage and when involved in the design, fabrication or substantial modification of commercially available equipment, also maintain product liability insurance;
- (9) Utilize extensive, written, quality assurance procedures including, but not limited to:
 - (A) Reviewing custom designed and fabricated equipment and interfacing techniques with commercial equipment to assure compatibility and safety;
 - (B) Understanding the properties of the materials being used in custom designed and modified equipment to assure long term durability;
 - (C) Documenting complaints and problems as required in Rule .1608(a)(12) of this Chapter.
- (10) Demonstrate that each item sold or rented has been checked, is free of defect, and operates within the manufacturers' specifications;
- (11) Refrain from modifying equipment to the extent that the modification might reasonably cause harm;
- (12) Maintain all electrical components so that they do not present a fire or shock hazard;
- (13) Ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided;
- (14) Maintain documentation demonstrating that a function and safety check of equipment was performed prior to set up;
- (15) Maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;
- (16) Maintain a Material Safety Data Sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;
- (17) Maintain segregated areas on the premises and in delivery vehicles for clean, dirty, and contaminated equipment;
- (18) Clean and disinfect equipment according to manufacturers' specifications; and
- (19) Instruct the patient on proper cleaning techniques as specified by the manufacturer.
- (c) Medical equipment suppliers shall implement a comprehensive preventative maintenance program which includes the following:
 - (1) Procedures for problem reporting, tracking, recall, and resolution;
 - (2) Performance of service as specified by the manufacturer and the documentation of such performance in the service records;
 - (3) Routine inspection, service, and maintenance of equipment located in the patient's/customer's home according to manufacturers' specifications;
 - (4) Maintain repair logs to document repair and maintenance of equipment. The following information shall be documented in the repair log:
 - (A) Type of equipment;
 - (B) Manufacturer;
 - (C) Model;
 - (D) Serial number;
 - (E) Date of repair;
 - (F) Specific repair made; and
 - (G) Name of person or company performing the repair.
- (d) In addition to Section .2500 of this Chapter medical equipment suppliers shall comply with the following counseling requirements:
 - (1) Utilize orientation checklists to review:
 - (A) Instructions for use of the equipment;
 - (B) Safety precautions;
 - (C) Cleaning procedures;
 - (D) Maintenance procedures; and
 - (E) Return demonstrations on equipment delivered;
 - (2) Instruct the patient about emergency and routine contact procedures;
 - (3) Deliver and review written instruction materials to ensure that the patient receives adequate information in order to properly operate the equipment; and
 - (4) A written plan of service shall be developed, implemented, and documented in the patient

record. The plan of service shall include, but is not limited to, an assessment of the safety of the home environment, the caregiver and/or patient ability to comply with the prescription, and the caregiver and/or patient ability to operate and clean the equipment as instructed.

Statutory Authority G.S. 90-85.3(e),(11),(r); 90-85.6; 90-85.22.

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Physical Therapy Examiners intends to amend rules cited as 21 NCAC 48A .0001, .0004; 48B .0002; 48D .0009 - .0011; 48E .0101, .0104, .0110; 48F .0003; 48G .0504, .0509, .0601; 48H .0102 and .0701.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 1:00 p.m. on December 7, 1995 at the NC Board of Physical Therapy Office, 18 West Colony Place, Suite 120, Durham, NC 27705.

Reason for Proposed Action:

21 NCAC 48A .0001, .0004; 48B .0002; 48D .0009 - .0011; 48E .0101, .0104, .0110; 48F .0003; 48G .0504, .0601; 48H .0102 and .0701 - To correct wording error and reformat current rules. To change title of executive officer. 21 NCAC 48G .0509 - To correct typographical error.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 15, 1995 to 5:00 p.m. on December 15, 1995. Such written comments must be delivered or mailed to Constance W. Peake, NC Board of Physical Therapy Examiners, 18 West Colony Place, Suite 120, Durham NC 27705.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 48A - ORGANIZATION

0001 NAME AND LOCATION

The North Carolina Board of Physical Therapy Examiners has its records at 120 West Colony Place, Suite 120, Durham, North Carolina 27705, telephone (919) 490-6393. The executive ~~secretary~~ director will be available there by appointment.

Statutory Authority G.S. 90-270.26.

.0004 EXECUTIVE DIRECTOR

An executive ~~secretary~~ director shall be hired when deemed necessary by the chairman with the approval of the Board.

Statutory Authority G.S. 90-270.26.

SUBCHAPTER 48B - TYPES OF LICENSES

.0002 LICENSES BY ENDORSEMENT

(a) Endorsement. Each application for endorsement will be considered on an individual basis.

(b) Examination Required. Only those persons initially licensed in another state by virtue of examination will be considered for endorsement. Only the following examinations will be considered:

(1) For Physical Therapists:

(A) Therapists licensed on the basis of a PT exam must present total scores that meet the North Carolina passing level. If adequate scores and information are not available from the other state, the Board may ask the applicant to have his scores issued through the appropriate testing service. If the total score on the examination is unsatisfactory, the exam must be repeated. The cost of the examination will be paid by the applicant.

(B) If licensed in another state by an examination compiled by that Board, the applicant must supply information for the Board to attempt to obtain the examination in order to determine if it was substantially equal to the examination required by North Carolina at that time. If it cannot be determined that the examination was equal to the North Carolina examination or if the scores received on an acceptable examination did not meet the North Carolina passing requirement, the applicant must take the PT exam. The cost of the examination will be paid by the applicant.

(C) A physical therapist currently licensed in another state whose license in that state was granted on the basis of the American Registry of Physical Therapists Examination will be considered for endorsement.

(D) If a foreign-trained physical therapist was licensed in another state on the basis of the American Physical Therapy Association's examination for foreign-trained physical therapists, this examination will be considered for endorsement.

(2) For Physical Therapist Assistants. Only those physical therapist assistants licensed in another state by a PTA exam will be considered for endorsement. The examination score must meet

the North Carolina passing level. If not, the applicant will be required to take the PTA exam and pay the cost of the examination.

(c) Active License. Evidence must be presented by the licensing Board in the other state that the applicant's license in that state was in effect on the date the application for North Carolina licensure was filed with the executive ~~secretary~~ director or that it has been activated since that date, if it was not in effect on the date the application was submitted. This must be done in accordance with Rule .0105 of Subchapter E of this Chapter.

Statutory Authority G.S. 90-270.26; 90-270.31(b); 90-270.33.

SUBCHAPTER 48D - EXAMINATIONS

.0009 RETAKING EXAMINATION

(a) Arrangements for Retake. To retake the examination, the applicant must notify the executive ~~secretary~~ director at least 60 days in advance of the examination date and pay the retake fee and the examination cost at that time.

(b) Retake Examination. The Board will administer a particular form of the examination to an applicant only one time.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.33.

.0010 ADMINISTRATION OF EXAMINATION

(a) Proctoring. The written examination shall be proctored by at least one member of the Board, by the executive ~~secretary~~ director or by the personnel of a professional testing service. Other proctors shall be retained as required.

(b) Identification. A person must bring identification with a photograph to the examination and show it to the proctor in order to sit for the examination.

(c) Questionable Conduct. A person engaged in questionable conduct on the examination will be required to sign a warning slip. Further violation of examination security will result in forfeiture of his right to continue the examination and may subject the applicant to permanent denial of consideration for licensure.

(d) Cheating. A person engaged in flagrant and obvious cheating will, at the discretion of the proctor, forfeit the right to continue the examination and may be subject to permanent denial of consideration for licensure.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.36.

.0011 APPLICANTS WITH SPECIAL NEEDS

Examination candidates who need special accommodations for the examination as a result of a medical or physical dysfunction shall file an Accommodation Request Form and supporting documentation with the executive ~~secretary~~

director at least 60 days before the examination date in order for the request to be considered by the Board.

Statutory Authority G.S. 90-270.60; P.L. 101-336.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

.0101 FILING APPLICATION

(a) It is the responsibility of the applicant to ascertain that his credentials are filed properly with the executive ~~secretary~~ director.

(b) To be certain an applicant will be considered for the desired examination date, the application must be submitted to the executive ~~secretary~~ director at least 60 days prior to the examination.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.31(b).

.0104 EXAMINATION SCORES

Persons seeking licensure by endorsement must have their examination scores sent to the executive ~~secretary~~ director by a state of endorsement, by the state in which the examination was taken, or by report from the appropriate testing service. The scores must be on a form bearing the official signature and seal of the reporting Board.

Statutory Authority G.S. 90-270.26; 90-270.31(b).

.0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(a) English Translations. All application forms and supporting documents must be in English or accompanied by an English translation.

(b) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant must submit the following:

- (1) If the applicant has been graduated from a physical therapy educational program, a certification of physical therapy education is to be submitted directly to the Board.
- (2) If the applicant does not meet the requirements of (b)(1) of this Rule, the Board shall examine the applicant's educational background to determine if the general college and professional instruction is substantially equivalent to that of a United States physical therapy educational program. At a minimum, 120 semester hours of college education is required, which includes a minimum of 57 semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education. It is the responsibility of the applicant to make arrange-

ments with a credentialing service to have the credentials evaluated. Evaluation of credentials, to be acceptable to the Board, must be done by a service that has a physical therapist consultant on its staff. The Board will make its own review of applicant's educational program and is not bound by the findings of the credentialing service.

~~(3) — Proof acceptable to the Board that a minimum score of 210 has been obtained on the TSE (Test of Spoken English) or proof the SPEAK (Speaking Proficiency English Assessment Kit) examination administered prior to July 1, 1995, or for examinations administered on or after July 1, 1995 a minimum score of 45 will be required on the TSE examination, or that English is the applicant's native language.~~

(3) Proof acceptable to the Board must be provided that:

- (A) for examinations administered prior to July 1, 1995, the required minimum score of 210 on the TSE (Test of Spoken English) or the SPEAK (Speaking Proficiency English Assessment Kit) examination was obtained,
- (B) for examinations administered on or after July 1, 1995, the required minimum score of 45 on the TSE examination or the SPEAK examination was obtained, or
- (C) English is the applicant's native language.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

SUBCHAPTER 48F CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

.0003 INVESTIGATIONS

Any complaint relevant to alleged violations of the North Carolina Physical Therapy Practice Act must be made in writing, signed by the person submitting the complaint, and include his address. Complaints are to be sent to the executive ~~secretary~~ director.

Statutory Authority G.S. 90-270.26; 90-270.35; 90-270.36.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0500 - CONTESTED CASE HEARINGS

.0504 COMPLAINTS AND INVESTIGATIONS

(a) In order to file a complaint with the Board, the following information shall be submitted to the Board in writing:

- (1) name and address of person alleged to have violated Physical Therapy Practice Act.
- (2) succinct statement of conduct giving rise to complaint.

(3) name, address and telephone number of complainant.

(b) Upon receipt of a written complaint alleging misconduct that might subject a licensee to disciplinary action, or upon the receipt of confirmation that a violation of the Physical Therapy Practice Act has occurred, the Board may investigate such matter to determine whether probable cause exists to institute formal disciplinary proceedings.

(c) The ~~Executive Secretary~~ executive director of the Board and a member appointed by the Chair shall serve as a probable cause or investigating committee. This committee may be assisted by the Board's attorney or investigator or by a former member of the Board retained for the purpose of such investigation.

(d) The probable cause committee shall investigate the complaint. The committee shall determine whether or not there is probable cause to believe that the licensee has violated any statute or board rule which would justify a disciplinary hearing. If the committee determines that such probable cause exists, the committee may confer with the licensee in an attempt to settle the matter through informal means. If the committee and the licensee reach an agreement on the disposition of the matter under investigation, the committee may cause to be drafted a proposed settlement agreement, which may include proposed findings of fact, conclusions of law, and a consent order, for presentation to and consideration by the Board. Such settlement agreement shall be presented to and approved by the licensee before they are presented to the Board for consideration and approval.

(e) If the probable cause committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board may give notice of a disciplinary or contested case hearing, if required.

(f) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the committee may recommend that the Board issue a reprimand to the licensee. The committee shall mail a copy of its recommendation to the licensee.

(g) Within 20 days after receipt of the recommendation, the licensee may refuse the reprimand and request a contested case hearing pursuant to this Section. Such refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.

(h) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the committee's recommendation and present reasons why the Board should not follow the committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.

(i) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall determine whether to accept the committee's recom-

mendation and issue the reprimand. A letter of caution is not considered disciplinary action against a licensee.

(j) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(k) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning such contested case with the members of the probable cause committee who investigated such matter, with persons not parties to the contested case who may be called as witnesses, including the person who filed the complaint and with the Board members about other matters.

Statutory Authority G.S. 90-270.26; 150B-38; 150B-40.

.0509 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The petition shall bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of Case).

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is ~~seeing~~ seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments or evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision shall be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification shall include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner shall be notified promptly. Such notice shall be in writing, shall identify the reasons for the denial, and shall be issued to the petitioner and all parties.

Statutory Authority G.S. 90-270.26; 150B-38.

SECTION .0600 - DISCIPLINARY ACTION

.0601 PROHIBITED ACTIONS

(a) Behaviors and activities which may result in disciplin-

ary action by the Board pursuant to G.S. 90-270.36(1), (6), (7), (8) and (9) and G.S. 90-270.35(4) include, but are not limited to, the following:

- (1) recording false or misleading data, measurements or notes regarding a patient;
- (2) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (3) practicing or offering to practice beyond the scope permitted by law;
- (4) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (5) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (6) harassing, abusing, or intimidating a patient either physically or verbally;
- (7) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
- (8) exercising undue influence on the patient, including the recommendation of unnecessary treatment for the financial gain of the practitioner or of a third party;
- (9) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client;
- (10) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
- (11) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the patient, except as authorized or required by law;
- (12) guaranteeing that a cure will result from the performance of professional services.
- (13) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
- (14) using a license which has been altered;
- (15) permitting or allowing another person to use his or her license for the purpose of physical therapy.
- (16) delegating professional responsibilities to a person when the licensee delegating such responsibilities know or has reason to know that such a person is not qualified by training, by experi-

ence, or by licensure;

- (17) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (18) inappropriately kissing, fondling, touching or engaging in any other activities of a sexual nature with a patient;
- (19) billing or charging for services or treatment not performed;
- (20) refusing to treat a patient because third party benefits have expired;

(b) When a person licensed to practice physical therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Physical Therapy Examiners may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Physical Therapy Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(c) In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive ~~Secretary~~ Director of the Board pursuant to G.S. 90-270.26(8). Such a finding shall be incorporated with the order of the Board of Physical Therapy Examiners and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced promptly.

(d) When the Board receives a notice from a Clerk of Superior Court that the license of a physical therapist or a physical therapist assistant has been forfeited pursuant to G.S. 15A-1331A, the licensee shall be required to surrender the license to the Board immediately and not to engage in the practice of physical therapy during the period of forfeiture. Forfeiture under this section shall not limit in any way the Board's authority to take further disciplinary action against the licensee in accordance with the Board's rules and procedures.

Statutory Authority G.S. 90-270.24; 90-270.26; 90-270.35(4); 90-270.36; 150B-3; 15A-1331A.

SUBCHAPTER 48H - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0100 - AVAILABILITY OF RULES

.0102 INSPECTION OF RULES

Official rules will be available for public inspection in the Office of Administrative Hearings or by making an appointment with the executive ~~secretary~~ director.

Statutory Authority G.S. 90-270.26; 150B-11; 150B-62.

SECTION .0700 - ADOPTION OF RULES

.0701 PETITIONS

(a) Any person wishing to submit a petition to the Board requesting the adoption, amendment or repeal of a rule shall file the petition with the Board's ~~Executive Secretary~~ executive director at the address specified in 48A .0001 of these Rules.

(b) The petition shall contain the following information:

- (1) a proposed text of the rule to be adopted or amended or a citation to the rule to be repealed;
- (2) a statement of the reason for the proposal, including statutory authority;
- (3) effect of the proposed rule change on the practice of physical therapy;
- (4) any data supporting the proposal;
- (5) name, address and telephone number of each petitioner.

(c) The Board shall consider whether to grant or deny a petition at its next regularly scheduled meeting following receipt of a completed petition, but in any event, no more than 120 days after a completed petition is filed with the Board.

(d) If the Board denies the petition, the petitioner shall be notified in writing, stating the reasons for the denial. If the decision is to approve the petition, the Board shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in this Subchapter.

Statutory Authority G.S. 90-270.26; 150B-20.

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend rules cited as 21 NCAC 54 .1605, .1608, .1703 - .1705, .1802 - .1803, .1901, .1904, .2001 - .2002, .2007, .2101, .2103, .2201 - .2203; repeal rules cited as 21 NCAC 54 .1604, .1801, .2003 - .2005, .2204; and adopt rules cited as 21 NCAC 54 .1610, .2008 - .2009.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on January 9, 1996 at the Howard Johnson Coliseum, 3030 High Point Road, Greensboro, NC.

Reason for Proposed Action:

- 21 NCAC 54 .1604 - to repeal rule establishing procedure for investigating practice by non-licensed persons.
- 21 NCAC 54 .1605 - to include costs for file documents, license verifications, and disciplinary action.
- 21 NCAC 54 .1608 - to correct the name of an agency.
- 21 NCAC 54 .1610 - to establish procedure for permitting limited practice by nonresident psychologists.
- 21 NCAC 54 .1703 - to establish procedure for applying for a temporary license.
- 21 NCAC 54 .1704 - to clarify review process for applications.
- 21 NCAC 54 .1705 - to correctly identify licensure level and require display of certificate.
- 21 NCAC 54 .1801 - to repeal rule which is no longer applicable.
- 21 NCAC 54 .1802 - to establish educational requirements at the Psychological Associate level.
- 21 NCAC 54 .1803 - to establish educational requirements at the Licensed Psychologist level.
- 21 NCAC 54 .1901 - to establish examination pass points and stipulate when examinations are offered.
- 21 NCAC 54 .1904 - to clarify the effect of not appearing for an examination.
- 21 NCAC 54 .2001 - to establish the requirements for supervisors.
- 21 NCAC 54 .2002 - to clarify the nature of supervision.
- 21 NCAC 54 .2003 - to repeal provisions for contracting and reporting of supervision.
- 21 NCAC 54 .2004 - to repeal time requirements for supervision.
- 21 NCAC 54 .2005 - to repeal provision for alternate supervision proposals.
- 21 NCAC 54 .2007 - to clarify supervision for applicants and other nonlicensed individuals.
- 21 NCAC 54 .2008 - to establish supervision requirements for a Psychological Associate license.
- 21 NCAC 54 .2009 - to establish supervision requirements for a permanent Psychologist license.
- 21 NCAC 54 .2101 - to set time for mailing renewal applications.
- 21 NCAC 54 .2103 - to establish information required for reinstatement.
- 21 NCAC 54 .2201 - to set requirements for corporate or company name.
- 21 NCAC 54 .2202 - to establish information required to apply for corporate or company registration.
- 21 NCAC 54 .2203 - to establish procedure for renewing corporate or company renewal.
- 21 NCAC 54 .2204 - to repeal provision for suspending or revoking corporate certificate of registration.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior January 9, 1996 to Martha Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 102, Boone, NC 28607. Anyone wishing to submit oral comments at the

hearing is requested to file a written statement in the Board's office no later than three days prior to the hearing, confirming that he or she wishes to speak at the hearing. Anyone presenting oral comments at the hearing is requested to provide a written statement of such comments to the Board when signing in on the morning of the hearing.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SECTION .1600 - GENERAL PROVISIONS

.1604 PRACTICE BY NON-LICENSED PERSONS

~~The Board receives and acts upon notices alleging that a person is engaging in the practice of psychology without a license. When such a complaint is received, the Board and/or its designated agent investigates to determine the facts regarding the allegations. If there is evidence of a violation of the law, the Board consults with the Attorney General's Office as to appropriate action.~~

Statutory Authority G.S. 90-270.9; 90-270.16; 90-270.17; 90-270.19.

.1605 FEES

In addition to fees specified in G.S. 90, Article 18A, the following charges will be assessed for the indicated services:

- (1) eight dollars (\$8.00) - copy of annual directory of licensed psychologists;
- (2) five dollars (\$5.00) - copy of 21 NCAC 54;
- (3) two hundred dollars (\$200.00) - renewal of license;
- (4) the cost of the examination to the Board plus twenty-five dollars (\$25.00) - national written examination;
- (5) one hundred dollars (\$100.00) - state examination;
- (6) twenty five cents (\$0.25) per page - copy of minutes of board ~~meetings, meetings or~~ transcript of ~~hearings; hearing, or file documents;~~
- (7) one hundred dollars (\$100.00) - application fee;
- (8) one hundred dollars (\$100.00) - reinstatement fee; ~~and~~
- (9) twenty dollars (\$20.00) - returned ~~check; check;~~
- (10) ten dollars (\$10.00) - each written license verification, whether submitted individually or on a list; and
- (11) costs of disciplinary action when an applicant or licensee is found to be in violation of the North Carolina Psychology Practice Act as follows:
 - (a) three hundred dollars (\$300.00) - consent order;
 - (b) three hundred dollars (\$300.00) - failure to appear on noticed hearing date or failure to give at least 72 hours notice of a request to continue the hearing; and
 - (c) three hundred dollars (\$300.00) per hour for a hearing which results in disciplinary action, with a minimum charge of three hundred dollars

(\$300.00) for the first hour or portion thereof, and then prorated thereafter for each half-hour.

Statutory Authority G.S. 12-3.1(c); 90-270.9; 90-270.15(c); 90-270.18(b)(c).

.1608 ETHICAL VIOLATIONS

The Board will use those policies, publications, guidelines, and casebooks developed by the American Psychological Association in determining whether violations of the Ethical Principles of Psychologists have occurred. In addition, publications, guidelines, policies, and statements provided by the ~~American Association of State Psychology Boards~~, Association of State and Provincial Psychology Boards, the National Association of School Psychologists, and other relevant professional associations and bodies may be used in interpreting the Ethical Principles of Psychologists.

Statutory Authority G.S. 90-270.9; 90-270.15(a)(10).

.1610 PRACTICE BY NONRESIDENT PSYCHOLOGISTS

(a) Except as provided in Paragraph (c) of this Rule, the information required for each nonresident psychologist who wishes to practice psychology in this State for up to five days in a calendar year consists of:

- (1) verification and report on the status of licensure, including any disciplinary action which is pending or has been taken from any jurisdiction in which the applicant is, or has been, licensed;
- (2) official, graduate college transcripts sent directly to the Board by the training institution(s); and
- (3) written report of the intended practice in this State and, if applicable, the name of the North Carolina psychologist(s) with whom the nonresident psychologist will be consulting.

All information must be received in the Board's office at least 30 days prior to the psychologist engaging in the practice of psychology in this State.

(b) The psychologist's educational level, licensure status in another jurisdiction, and intended practice shall be considered in determining whether or not supervision is required. If the Board determines that supervision is required, the applicant shall submit a notarized supervision contract form prior to practicing psychology in this State.

(c) The Board shall waive the specified 30 day notice period, supervision, and the submission of the information described in Subparagraphs (a)(1) and (a)(2) of this Rule for nonresident licensed psychologists who are placed in North Carolina by the Red Cross due to a national, area, or local disaster.

Statutory Authority G.S. 90-270.4(f); 90-270.9.

SECTION .1700 - APPLICATION FOR LICENSURE

.1703 TEMPORARY LICENSES

~~(a) A non resident who is a licensed psychologist in another state may be issued a temporary license in North Carolina for a period not to exceed 30 consecutive business days, or 45 business days in any 90 day period, provided the following is submitted to the Board and approved by the chairperson:~~

- ~~(1) written verification of licensure or certification from the appropriate licensing Board;~~
- ~~(2) report of the nature of intended practice; and~~
- ~~(3) twenty five dollars (\$25.00).~~

~~(b) A non resident, licensable psychologist may be issued a temporary license for the same period as specified in Paragraph (a) of this Rule, provided the following is submitted to the Board and approved by the chairperson:~~

- ~~(1) summary of qualifications, including professional experience and educational training;~~
- ~~(2) report of the nature of intended practice; and~~
- ~~(3) twenty five dollars (\$25.00).~~

~~(c) A psychologist who comes to reside in North Carolina or an applicant for licensure who is otherwise qualified for licensing may be issued a temporary license until the Board conducts its next regularly scheduled licensing examination and the applicant can be notified of the results, provided the following are received and approved by the Board:~~

- ~~(1) information listed in 21 NCAC 54 .1701 Information Required and, if applicable, 21 NCAC 54 .1702 Foreign Degree Application Policy; and~~
- ~~(2) fifteen dollars (\$15.00).~~

~~This license cannot be issued, reissued, or extended if the applicant chooses not to take the first scheduled examination after being admitted, if the applicant fails the examination, or if the applicant has previously failed an examination, or if the applicant has previously failed to appear for an examination to which he/she was admitted.~~

~~(d) A psychologist who meets all requirements of G.S. 90-270.11(a) for licensing, except the two years of acceptable and appropriate experience, may be issued a temporary license. To upgrade to permanent status, an application form must be filed with the Board. Final supervision reports will be required from all psychologists whose supervision time is not already documented in the applicant's file.~~

(a) The information required for each nonresident psychologist requesting a temporary license consists of:

- (1) verification and report on the status of licensure, including any disciplinary action which is pending or has been taken from any jurisdiction in which the applicant is, or has been, licensed;
- (2) requirements for licensure at the time the psychologist was licensed in another jurisdiction;
- (3) written report of the intended practice in this State and, if applicable, the name of the North Carolina psychologist(s) with whom the nonresident psychologist will be consulting; and
- (4) temporary license fee.

All information must be received in the Board's office at

least 30 days prior to the psychologist engaging in the practice of psychology in this State. Only one temporary license shall be issued to an individual in any calendar year. The psychologist's educational level, licensure status in another jurisdiction, and intended practice shall be considered in determining whether or not supervision is required. If the Board determines that supervision is required, the applicant shall submit a notarized supervision contract form prior to practicing psychology in this State.

(b) The information required for each psychologist requesting a temporary license who is applying for reinstatement of licensure is listed in 21 NCAC 54 .2103. A temporary license is valid until the applicant takes the first examination to which admitted by the Board, if applicable, and is notified of the results, and until the reinstatement fee is paid. This license will not be issued, reissued, or extended if the applicant fails the examination, fails to appear for the examination, or fails to remit the required fees within the time period stipulated in 21 NCAC 54 .2103. A temporary licensee shall comply with supervision requirements specified in Section .2000 of this Chapter for the same level of licensure for which application for reinstatement is made.

Statutory Authority G.S. 90-270.5(f),(g); 90-270.9.

.1704 REVIEW PROCEDURE

(a) A sub committee of the board reviews each applicant's credentials. At the next regularly scheduled meeting of the board, the sub committee reports on its appraisal of the credentials which are then considered by the entire board.

(b) If the credentials are approved, the applicant is so informed and is given information regarding the examination if applicable.

(c) If the credentials do not meet the required qualifications for licensure, the applicant is given an explanation of the areas which are considered deficient and informed of his/her right to an administrative hearing.

(d) If, during the review of information submitted with an application, questions arise from comments made in reference letters or supervisor reports which may pertain to the ethical behavior or the moral character of the applicant, the Board may request additional information from references, supervisors, and the applicant. In addition, the Board may schedule an interview with the applicant concerning the questions raised by the application material. Such questions are dealt with in the following manner:

- (1) An effort is made to clarify the particulars of any allegations by correspondence or telephone calls with the person who has made the comments and/or with the applicant.
- (2) If the questions are not resolved, the applicant may be asked to appear before the board for an interview.
- (3) Following any interview, the Board conducts a full discussion of the allegations and determines by formal vote whether the evidence is sufficient

to deny licensure.

- (4) If licensure is denied, an explanation of the grounds on which the decision was made is given and the applicant is informed of his/her right to an administrative hearing.

Statutory Authority G.S. 90-270.9; 90-270.15.

.1705 ISSUANCE OF LICENSE

An applicant who has met all of the requirements for licensure as either a practicing licensed psychologist or psychological associate is issued a certificate of licensure. This license shows the date, license number, licensee's name and academic degree upon which licensure is based, level of licensure, and the signatures of all current Board members. The official seal is affixed to each. A licensee shall display the licensure certificate in a place that is visible to the licensee's served clientele.

Statutory Authority G.S. 90-270.9; 90-270.11(a); 90-270.11(b); 90-270.13.

SECTION .1800 - EDUCATION

.1801 PRACTICING PSYCHOLOGIST REQUIREMENTS AS OF JUNE 30, 1987

(a) This rule applies only to those practicing psychologist applicants who apply for a license on or before:

- (1) July 1, 1989, or
- (2) July 1, 1993, provided they were enrolled in doctoral training programs on or before December 31, 1987, and received their doctoral degree after July 1, 1987, but on or before July 1, 1993.

(b) A doctoral degree in psychology from an accredited educational institution will be considered to be a planned and directed program of studies which is psychological in nature. If the applicant does not possess such a degree, evidence must be provided that the applicant's degree is from an accredited educational institution and is based on a program of planned and directed studies which is psychological in nature. Such a program must:

- (1) be taken within a recognizable, coherent, organizational entity within the university which contains an identifiable psychology faculty and a psychologist responsible for the program;
- (2) include practicum, internship, field experiences, or laboratory training appropriate to one's area of specialty and to the practice of psychology;
- (3) include a minimum of 60 semester hours of graduate study in standard psychology courses:
 - (A) a maximum of six semester hours will be allowed for dissertation/thesis, and
 - (B) a maximum of six semester hours will be allowed for internship/practicum;
- (4) include instruction in:
 - (A) scientific and professional ethics and standards,

- ~~(B) research design and methodology; and~~
- ~~(C) statistics and psychometrics;~~
- ~~(5) ordinarily include a minimum of three semester hours in each of the following substantive content areas:~~
 - ~~(A) biological bases of behavior;~~
 - ~~(B) cognitive-affective bases of behavior;~~
 - ~~(C) social bases of behavior; and~~
 - ~~(D) individual differences.~~

~~(e) If the applicant wishes to claim that course work done in departments other than psychology should be counted in meeting the minimum hour requirement, evidence must be provided, in a form specified by the Board, that such courses are psychological in nature. This evidence shall consist of:~~

- ~~(1) a description of the courses;~~
- ~~(2) textbooks used;~~
- ~~(3) name of professors;~~
- ~~(4) statement of professors' membership in national, regional, and state psychological associations; and~~
- ~~(5) professors' licensure or certification status.~~

Statutory Authority G.S. 90-270.9; 90-270.11(a)(1)c.

.1802 PSYCHOLOGICAL ASSOCIATE

~~(a) Licensure for the level of psychological associate requires a master's degree in psychology.~~

~~(b) Any person in the regular employ of the State of North Carolina or whose employment is included under the State Personnel Act who has served in a position involving the practice of psychology for five consecutive years by December 31, 1984, may apply under a master's equivalency provision. Ordinarily, 30 semester hours in graduate level psychology courses or courses documentable as psychological in nature will be considered to meet the equivalency requirement. A maximum of 6 semester hours will be allowed for dissertation/thesis and 6 semester hours for internship/practicum. If the graduate training did not include a practicum or internship, work experience supervised by a licensed or licensable psychologist may be substituted for such. The master's equivalency is also further delineated in the following manner:~~

- ~~(1) 12 semester hours in courses drawn from General Psychology, Social, Experimental, Physiological, Developmental, History or Systems;~~
- ~~(2) 6 semester hours in Statistics and Research Design;~~
- ~~(3) 12 semester hours in a Specialty Area, which includes course work in theories or methods relevant to practice in the specialty or area of emphasis and may include practicum and internship.~~

See 21 NCAC 54 .1801(e) for documentation information.

(a) Licensure for the level of psychological associate requires a master's degree or specialist degree in psychology from an institution accredited by one of the regional accred-

iting bodies recognized by the Commission on Recognition of Postsecondary Accreditation. The degree program shall meet all of the following requirements:

- (1) The program, wherever it may be administratively housed, shall be publicly identified and clearly labeled as a psychology program; such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train psychologists to engage in the activities which constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall stand as a recognizable, coherent organizational entity within the institution.
- (3) The program shall maintain clear authority and primary responsibility for the core and specialty areas whether or not the program crosses administrative lines.
- (4) The program shall have an identifiable body of students who are matriculated in that program for a degree.
- (5) There shall be an identifiable full-time psychology faculty on site, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the home campus of the institution.
- (6) There shall be a psychologist responsible for the applicant's program either as the administrative head of the program, or as the advisor, major professor, or committee chair for the individual applicant's program.
- (7) The program in psychology shall be an integrated, organized sequence of study in psychology as demonstrated by an identifiable curriculum track or tracks wherein course sequences are outlined.
- (8) The program shall encompass the equivalent of a minimum of one academic year of full-time graduate study in residence at the institution from which the degree is granted. Residence requires interaction with psychology faculty and other matriculated psychology students. One year's residence is defined as 30 semester hours taken on a full-time or part-time basis at the institution.
- (9) The program shall include internship, externship, practicum, or other field experience appropriate to the area of specialty and the practice of psychology. This experience shall meet all of the following criteria:
 - (A) It shall have been a planned and directed program of training in the practice of psychology, in contrast to on-the-job training, and shall have provided the trainee with a planned and directed sequence of training integrated with the educational program in which the individual was enrolled.

- (B) The training site shall have had a clearly designated and appropriately licensed psychologist who was responsible for the integrity and quality of the training program.
- (C) Typically, the training shall have been comprised of the equivalent of at least one semester's training and shall have been a minimum of 12 weeks and 200 hours of supervised training.
- (D) The training program shall have had a written program description detailing its functioning and shall have been approved by the applicant's educational program prior to its occurrence.
- (E) The training shall have provided a minimum of one hour per week of individual face-to-face, regularly scheduled supervision with the specific intent of overseeing the psychological services rendered by the trainee.
- (F) At least 50% of the training shall have been spent in the provision of psychological services to patients or clients seeking assessment of treatment, and shall have been comprised of a range of assessment and treatment interventions.
- (G) Supervision may have been provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall have been provided by an appropriately licensed or certified psychologist or psychological associate, or other psychologist who is exempt from licensure under the North Carolina Psychology Practice Act.
- (H) Persons enrolled in the training shall have been designated as "interns", "externs", or "practicum students", or hold other designation which clearly indicated training status.
- (10) The program of study shall include a minimum of 30 semester hours of graduate study in standard psychology courses, exclusive of internship/practicum and thesis/dissertation hours. These hours shall include:
 - (A) 12 semester hours in courses drawn from Academic Psychology (Social, Experimental, Physiological, Developmental, History and Systems);
 - (B) 6 semester hours in Statistics and Research Design; and
 - (C) 12 semester hours in a Specialty Area, which includes course work in theories or methods relevant to practice in the specialty or area of emphasis.

(b) (e) An applicant whose credentials have been approved by the Board for examination at the ~~practicing~~ licensed psychologist level may be issued a license as a psychological associate if the applicant fails an examination

at the ~~practicing~~ licensed psychologist level but passes such at the psychological associate level. To receive this license, the applicant must make a written request to the Board for licensure at the psychological associate level within 30 days from the date on which the applicant is notified of his/her examination score.

Statutory Authority G.S. 90-270.2(5),(7),(8); 90-270.9; 90-270.11(b).

.1803 LICENSED PSYCHOLOGIST

(a) ~~This rule applies to all practicing psychologist applicants making application after July 1, 1989, except those applicants who meet all the following requirements:~~

- (1) ~~were enrolled in doctoral training programs on or before December 31, 1987, and~~
- (2) ~~received their doctoral degree after July 1, 1987, but on or before July 1, 1993, and~~
- (3) ~~make application on or before July 1, 1993.~~

~~Practicing Psychologist applicants meeting all the requirements specified in Subparagraphs (a)(1), (a)(2), and (a)(3) of this Rule shall be considered under Rule .1801 Practicing Psychologist Requirements as of June 30, 1987.~~

(a) (b) ~~License for the level of Psychologist requires a A doctoral degree based on a planned and directed program of studies in psychology from an institution accredited by one of the regional accrediting bodies recognized by the Council on Postsecondary Accreditation Commission on Recognition of Postsecondary Accreditation. is required. The doctoral program must shall be one which was fully accredited by the American Psychological Association throughout the period of the applicant's enrollment in at the time of the applicant's graduation from the program, or one which meets all of the following requirements: requirements, as determined by the board and documented in a format specified by the board.~~

- (1) The program, wherever it may be administratively housed, ~~must shall~~ be publicly identified and clearly labeled as a psychology program; such a program ~~must shall~~ specify in pertinent institutional catalogues and brochures its intent to educate and train psychologists to engage in the activities which constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program ~~must shall~~ stand as a recognizable, coherent organizational entity within the institution.
- (3) The program ~~must shall~~ maintain clear authority and primary responsibility for the core and specialty areas whether or not the program crosses administrative lines.
- (4) The program ~~must shall~~ have an identifiable body of students who are matriculated in that program for a degree.
- (5) There ~~must shall~~ be an identifiable full-time psychology faculty on site, sufficient in size and breadth to carry out its responsibilities, em-

played by and providing instruction ~~and/or program coordination~~ at the home campus of the institution.

- (6) There ~~must~~ shall be a psychologist responsible for the applicant's program either as the administrative head of the program, or as the advisor, major professor, or committee chair for the individual applicant's program.
- (7) The program in psychology ~~must~~ shall be an integrated, organized sequence of study as demonstrated by an identifiable curriculum track or tracks wherein course sequences are outlined.
- (8) The program ~~must~~ shall encompass the equivalent of a minimum of three academic years of full-time graduate academic study, two years of which are at the institution from which the degree is granted, and one year of which is in residence at the institution from which the degree is granted. ~~granted, or its equivalent.~~ Residence requires interaction with psychology faculty and other matriculated psychology ~~students; students.~~ One year's residence or its equivalent is defined as follows: 30 semester hours taken on a full-time or part-time basis at the institution.
 - (A) ~~30 semester hours taken on a full-time or part-time basis at the institution, or~~
 - (B) ~~a minimum of 300 hours of student-faculty contact involving face-to-face individual or group educational meetings. Such educational meetings must include both faculty-student and student-student interaction, be conducted by the psychology faculty of the institution at least 90% of the time, be fully documented by the applicant and the institution, and relate substantially to the program components specified in Subparagraphs (b)(9), (b)(10), and (b)(11) of this Rule. The institution must clearly document how the applicant's performance is assessed and evaluated.~~
- (9) The program ~~must~~ shall include ~~practicum, internship, field experiences, or laboratory training~~ internship, externship, practicum, or other field experience appropriate to the area of specialty and the practice of psychology. ~~psychology; this experience must be supervised by a psychologist. This experience shall meet all of the following criteria:~~
 - (A) The training shall be a planned and directed program in the provision of health services, in contrast to "on the job" training, and shall provide the trainee with a planned and directed sequence of training integrated with the educational program in which the individual was enrolled.
 - (B) The training site shall have a written statement or brochure which describes its training pro-

gram and is made available to prospective trainees.

- (C) Trainees shall be designated as "interns," fellows," or "residents," or hold other designation which clearly indicates training status.
- (D) The training shall be completed within 24 months.
- (E) The training shall consist of at least 1500 hours of practice.
- (F) The training site shall have a minimum of two doctorally trained licensed, certified, or license eligible psychologists at the training site as supervisors who have ongoing contact with the trainee.
- (G) The training shall be under the direction of a licensed, certified, or license eligible doctorally trained psychologist who is on the staff of the training site, who approves and monitors the training, who is familiar with the training site's purposes and functions, who has ongoing contact with the trainee, and who agrees to assume responsibility for the quality, suitability, and implementation of the training experience.
- (H) The training shall provide a minimum of two hours per week of individual face-to-face discussion of the trainee's practice, with the specific intent of overseeing the psychological services rendered by the trainee. Supervision may be provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall be provided by licensed, certified, or license-eligible doctorally trained psychologists.
- (I) In additional to individual supervision, the training site shall provide a minimum of two hours per week of instruction which may be met by group supervision, assigned reading, seminars, and similarly constituted organized training experiences.
- (10) The program of study ~~must~~ shall include a minimum of 60 semester hours of graduate study in standard psychology ~~courses~~ courses, exclusive of internship/practicum and thesis/dissertation hours, except as allowed in this Subparagraph. These hours ~~will~~ shall include instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, and the specialty area. ~~A maximum of six semester hours will be allowed for internship/practicum and a maximum of six semester hours will be allowed for thesis/dissertation. If the applicant wishes to utilize selected course work from other than psychology departments or programs toward meeting the minimum course hour requirements and/or~~

~~curricular requirements specified in this Subparagraph and in Subparagraph (b)(11), evidence must be provided, in a form specified by the board, that such courses are relevant to the applicant's organized sequence of study or that they are psychological in nature. This evidence shall consist of:~~

- ~~(A) a description of the courses;~~
- ~~(B) the textbooks used;~~
- ~~(C) name, degree, and specialty of the professor;~~
- ~~(D) statement of professors' membership in national, regional, and state psychological associations;~~
- ~~(E) licensure or certification status of the professors; and~~
- ~~(F) relevance to specialty area and organized sequence of study.~~

(11) Ordinarily, ~~the~~ The program ~~must~~ shall include demonstrated competency in the four substantive content areas identified Subparagraph; typically, this will be met through a minimum of three semester hours in each of these content areas:

- (A) biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology);
- (B) cognitive-affective bases of behavior (e.g., cognition, memory, learning, thinking, motivation, emotion);
- (C) social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, cultural and ethnic bases, sex roles);
- (D) individual differences (e.g., personality theory, human development, abnormal psychology, individual differences).

~~(e) Two years of acceptable and appropriate supervised experience is as defined in 21 NCAC 54 .2001 Supervisor, .2002 Nature of Supervision, and .2004 Time Requirements.~~

Statutory Authority G.S. 90-270.2(5),(6),(8); 90-270.5(d)(2); 90-270.9; 90-270.11(a).

SECTION .1900 - EXAMINATION

.1901 TYPES

(a) Written Examinations. National and state written examinations ~~shall be~~ are administered semiannually on testing dates ~~set by the Association of State and Provincial Psychology Boards in April and October of each year. Dates are set by the American Association of State Psychology Boards.~~ Additionally, the state written examination shall be administered on testing dates set by the Board in January and July of each year.

- (1) National Examination. The Board administers a current form of the Examination for Professional Practice in Psychology (EPPP). ~~(EPPP) pro-~~

~~vided by the Professional Examination Service. The EPPP assesses the applicant's knowledge of the subject matter of psychology and his/her understanding of professional and ethical problems in the practice of psychology. Separate passing points for practicing psychologist and psychological associate will be established utilizing the criterion referenced method. The passing point for licensed psychologist is set at 140. The passing point for psychological associate is set at 128. This examination is not required for an applicant who has previously taken the EPPP and whose score meets the North Carolina passing point in this state, which was established for that particular administration date of the examination.~~

- (2) State Examination. The ~~board~~ Board administers to all approved applicants for licensure a ~~board-developed~~ Board-developed state examination which assesses the applicant's knowledge of the North Carolina ~~Practicing Psychologist Licensing Psychology Practice Act~~, selected rules of the Board covering such topics as education and supervision, and other materials as identified by the Board. ~~A single passing point will be established utilizing the criterion referenced method. The passing point for all licensees is set at 39.~~

(b) Oral Examination. The ~~board~~ Board may substitute oral examinations for the written examinations for a physically handicapped applicant who is unable to take a written test. Such oral examinations will be administered on the same dates as written examinations. Additionally, upon proof that an applicant or licensee has engaged in any of the prohibited actions specified in G.S. 90-270.15(a), the Board may administer a state oral examination which assesses knowledge of the North Carolina ~~Practicing Psychologist Licensing Psychology Practice Act~~, selected rules of the Board covering such topics as education and supervision, and other materials as identified by the Board.

Statutory Authority G.S. 90-270.9; 90-270.11; 90-270.15(b).

.1904 FAILURE TO APPEAR

If an applicant does not appear for an examination on the first scheduled examination date to which admitted by the Board, ~~he/she shall be permitted to take the examination on the next scheduled examination date without reapplying. If an applicant does not appear for examination on two consecutive examination dates, he/she shall totally reapply. If an applicant or does not appear for reexamination on the first scheduled examination date following failure of an examination, he/she must totally reapply.~~

Statutory Authority G.S. 90-270.9.

SECTION .2000 - SUPERVISION

.2001 SUPERVISOR

(a) The following individuals may be recognized as an appropriate supervisor for any psychological associate or ~~practicing provisional psychologist; psychologist, temporary;~~

- (1) a licensed ~~practicing~~ psychologist, permanent;
- (2) ~~professionals other than psychologists, in keeping with Rule .2005 in this Section;~~

(2) (3) any person who was in a psychology position with the State of North Carolina on December 31, 1979, and who is still so employed, provided that such supervision is, and was on December 31, 1979, within the psychologist's regular job description and is only for activities which are part of the regular duties and responsibilities of the supervisee within his/her regular position at a ~~state~~ State agency or department; or

(3) (4) a doctoral level licensed psychologist who is licensed in the state or province where the supervisee is practicing ~~psychology, psychology;~~ or

(5) ~~an individual who, although not licensed as a psychologist, is, in the opinion of the Board, trained as a psychologist.~~

(b) The Board may disapprove an otherwise qualified supervisor ~~for any psychological associate or practicing psychologist, temporary,~~ if the potential supervisor, in the opinion of the Board, is not acceptable. Reasons for which a proposed supervisory relationship may be disapproved shall include, but not be limited to:

- (1) evidence that the potential supervisor is not competent or qualified to supervise the supervisee;
- (2) evidence that the supervisor has failed to adhere to ethical standards;
- (3) evidence that there is a lack of congruence between the potential supervisor's training, experience, and area of practice and the supervisee's proposed area(s) of practice; or
- (4) the supervisor has an encumbered license.

(c) ~~It is the supervisor's responsibility to provide the best possible professional guidance which is mutually beneficial to both the supervisee and to the public which he/she ultimately serves. It is the supervisor who serves as a primary professional guardian of the supervisee, the profession, and the public. Supervisors are to carefully assess their own ability to meet the particular needs of potential supervisees. It is expected that the professional expertise and experience of the supervisor will parallel the expected practice of the supervisee. Should there be some areas in which the supervisor does not feel so qualified, adjunct supervisors shall be sought, although this additional supervision is, in no way, to replace the overall responsibility of the primary supervisor. Clear professional goals shall be set by the supervisor and supervisee for, and during, the period of supervision and these goals must be evaluated on a regular basis.~~

(c) Each supervisor shall:

- (1) carefully assess his/her own ability to meet the particular needs of potential supervisees;
- (2) offer and provide supervision only within the supervisor's own area(s) of competence and assure that the professional expertise and experience of the supervisor parallel the practice of the supervisee;
- (3) serve as a primary professional guardian of the supervisee, the profession, and the public;
- (4) enter into a written agreement with the supervisee which details the supervisee's obligations as well as the supervisor's responsibilities to the supervisee;
- (5) assure that the supervisee only practices psychology within areas for which he/she is qualified by education, training, or supervised experience;
- (6) determine that the supervisee has given appropriate notice to clients or patients that he/she is being supervised as a trainee, applicant, or licensee, that clinical information will be discussed with the supervisor, and the means by which the supervisor may be contacted;
- (7) establish and maintain a level of supervisory contact consistent with established professional standards, be accessible to the supervisee, and be fully accountable in the event that professional, ethical, or legal issues are raised pertaining to the supervised practice;
- (8) keep informed of all the services performed by the supervisee;
- (9) advise the Board if any complaints about the supervisee are received which indicate possible problems in the supervisee's competence or adherence to ethical standards, or if the supervisor has any reason to suspect that the supervisee is less than ethical or professional;
- (10) maintain detailed supervisory records including, but not limited to, dates of supervision, length of sessions, and issues discussed;
- (11) report on the required form to the Board that agreed upon supervision has occurred; and
- (12) notify the Board in writing when supervision terminates and file a final supervision report.

(d) ~~In order to~~ To maintain the professional nature of the supervision, a familial or strongly personal relationship shall not exist between the supervisor and supervisee, except in extra-ordinary circumstances, such as the unavailability of any other qualified supervisor. In such cases, the Board may require documentation that no other supervision is available and reference letters from colleagues commenting on the appropriateness of the proposed supervisory relationship.

Statutory Authority G.S. 90-270.5; 90-270.9.

.2002 NATURE OF SUPERVISION

(a) The nature of supervision depends on the specific

areas of practice, experience, and training germane to the area of specialty of the supervisee. Supervision shall include consideration of, but not be limited to, the following areas:

- (1) ethical standards and legal/professional guidelines;
- (2) technical skills and competency;
- (3) supervisee's utilization of supervision;
- (4) supervisee's professional growth; and
- (5) supervisee's ability to function independently.

(b) Supervision consists of face-to-face discussion of the supervisee's practice of those aspects of psychology for which supervision is required and shall be provided in individual sessions.

(c) Each supervisee shall:

- (1) attend scheduled supervision sessions;
- (2) provide his/her supervisor with a full disclosure of psychological services being offered and/or rendered by the supervisee;
- (3) cooperate fully with the supervisor to assure that all conditions in Paragraph (c) of Rule .2001 of this Section are met;
- (4) notify the Board if he/she has any reason to suspect that the supervisor is less than ethical or professional; and
- (5) notify the Board of any change in the conditions specified in the supervision contract form on file with the Board.

(d) ~~(e)~~ The supervisee and his/her supervisor are expected to determine jointly which cases, issues, and techniques are most appropriate and necessary for supervision, although both parties are fully accountable for all professional activities in terms of adequate standards of care and adherence to other relevant ethics principles. Specific supervision is not mandated for each person evaluated or treated, or for every treatment, evaluative technique, or professional activity undertaken. Supervisors are not required to sign or co-sign reports, treatment plans, letters, or other clinical documents for which the supervisee may be fully or in part responsible; neither is it necessary that such clinical documents reflect the supervisory process. Agencies are not, of course, precluded from requiring supervisor signatures or co-signatures.

Statutory Authority G.S. 90-270.5; 90-270.9.

.2003 CONTRACTING AND REPORTING

(a) ~~A written, notarized supervision contract form, with the appropriate section completed, must be filed with the Board within 30 days from the date of licensure by every psychological associate and practicing psychologist, temporary. A supervision contract form documents that either supervision is required and being received, or that supervision is not required. A new contract form must be filed within 30 days after a substantial change concerning supervision occurs.~~

(b) ~~It is the responsibility of a supervisor to report on the~~

~~appropriate form to the Board that agreed upon supervision has occurred. In addition, a supervisor must inform the Board when supervision terminates and file a final report. If not receiving supervision, it is the responsibility of the psychological associate or practicing psychologist, temporary, to report such on the appropriate form to the Board. Reports are required annually at license renewal time for psychological associates and semiannually during June and at license renewal time for practicing psychologists, temporary.~~

~~(e) Additional monitoring and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggest possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.~~

~~(d) Contract and report forms are provided by the Board.~~

Statutory Authority G.S. 90-270.2(f); 90-270.4(a2); 90-270.5(d); 90-270.9; 90-270.15(e).

.2004 TIME REQUIREMENTS

~~(a) Practicing Psychologist, Temporary. All activities involving the practice of psychology are subject to review by a supervisor.~~

~~(1) Individual supervision sessions are as follows:~~

| | |
|------------------------|--------------------------|
| No. of hours per week | No. of hours of required |
| engaging in the | individual supervision |
| practice of psychology | per month |

| | |
|---------|---|
| 1-10 | 1 |
| 11-20 | 2 |
| 21-30 | 3 |
| 31 plus | 4 |

~~Individual supervision sessions are to be scheduled for no longer than 2 hours or less than 30 minutes.~~

~~(2) Permanent status requires at least two full calendar years and 3100 hours of post doctoral supervised practice. Temporary licensees are encouraged to meet this requirement through full time practice. Full time practice is credited based on the number of weeks of actual practice. Part time practice is credited based on the number of hours per week of actual practice. A maximum of 31 hours may be credited for a week of actual practice.~~

~~(3) A temporary licensee who is employed full time and receiving appropriate supervision, and who also engages in additional practice, must obtain additional supervision at a rate of at least one hour of supervision for every 40 hours per~~

month of practice, but not less than one hour per month for any month in which such practice occurs. A separate supervision contract form must be filed for these activities.

(b) ~~Psychological Associate. Activities involving overall personality appraisal or classification, personality counseling or personality readjustment techniques are subject to review by a supervisor.~~

(1) ~~Individual supervision sessions are as follows:~~

| | |
|--|---|
| No. of hours per month engaging in activities that require supervision | No. of hours of required individual supervision per month |
|--|---|

| | |
|---------|---|
| 1-10 | 1 |
| 11-20 | 2 |
| 21-30 | 3 |
| 31 plus | 4 |

Individual supervision sessions are to be scheduled for no longer than 2 hours or less than 30 minutes.

(2) ~~If engaging in practice in addition to regular employment, a separate supervision contract form must be filed with the Board. Additional supervision at the same rate as specified in the table in Subparagraph (b)(1) of this Rule must be obtained from a practicing psychologist, permanent, for the additional activities that require supervision.~~

(c) ~~Exemptions. The following licensees are exempt from requirements specified in this Rule:~~

(1) ~~practicing psychologists, temporary, who are not presently involved in the practice of psychology. When such is the case, the Board will place the psychologist on inactive status, during which time the license must be kept renewed. In order to reactivate the license, the practicing psychologist, temporary, must arrange to receive supervision and file the appropriate section of a supervision contract form with the Board.~~

(2) ~~psychological associates whose professional practice is limited to activities other than overall personality appraisal or classification, personality counseling or personality readjustment techniques;~~

(3) ~~psychological associates who are employed by the State Department of Public Instruction or local boards of education, and whose professional activities are limited only to those for which they are employed by those agencies. This exemption does not apply to those individuals who contract with the Department of Public Instruction or local boards of education for the delivery of psychological services in the schools.~~

270.5(d); 90-270.9.

2005 ALTERNATE SUPERVISION REQUIREMENTS

(a) ~~In lieu of the requirements for supervision of psychological associates stated in Rule 2004 in this Section, governmental agencies and/or private organizations involved in the practice of psychology may submit alternative supervision plans for one or more psychological associates. To be approved by the Board, the applicant agency or organization must demonstrate that such alternative supervision plans meet one of the following conditions:~~

(1) ~~that compliance with the standard supervision requirements would constitute a significant hardship; or~~

(2) ~~that the alternative plan would provide significantly superior supervision.~~

(b) ~~If one of the conditions stated in Paragraph (a) of this Rule can be met, then supervision from another psychological associate, a licensed practicing psychologist, temporary, or a professional from a related discipline may be acceptable if the Board concurs that this supervision would be comparable in quantity and quality to the individual supervision requirement under Rule 2004 of this Section. The following guidelines must be met:~~

(1) ~~at least 50 percent of the supervision must be provided in individual sessions;~~

(2) ~~supervision in groups is credited on a ratio basis, with the number of hours of group supervision divided by the number of those participating equaling the amount of supervision time credited to each psychological associate;~~

(3) ~~staff meetings, quality assurance meetings, and similar groupings will not be considered as supervision for these purposes;~~

(4) ~~the alternative supervision plan must be reviewed, approved, and monitored by a licensed practicing psychologist, permanent, who is familiar with the agency's purposes and functions, and agrees to assume responsibility for the quality, suitability, and implementation of the plan throughout its duration;~~

(5) ~~the applicant agency or organization must submit individual contracts for all psychological associates under the plan, specifying the nature and extent of their participation in plan components.~~

Statutory Authority G.S. 90-270.2(f); 90-270.9.

2007 APPLICANTS AND OTHER NONLICENSED INDIVIDUALS

(a) Except as provided for in this Rule and in 21 NCAC 54 .1610, applicants ~~Applicants~~ and individuals who have yet to apply shall not practice or offer to practice psychology without supervision. All activities comprising the practice of psychology are subject to review by a supervisor, except those activities which are exempt from licensure

Statutory Authority G.S. 90-270.2(f); 90-270.4(a2); 90-

as stipulated in G.S. 90-270.4. A minimum of one hour per week of regularly scheduled face-to-face individual supervision is required in any week in which an applicant or nonlicensed individual practices psychology. Supervision must shall be provided by an individual who may-be is recognized as an appropriate supervisor of licensees as defined in Rule .2001 of this Section.

(b) An applicant or a nonlicensed individual who is not practicing or offering to practice psychology in North Carolina is not required to receive supervision.

(c) An applicant must shall keep a written, notarized supervision contract form on file in the Board's office at all times. A supervision contract form documents that either supervision is required and being received, or that supervision is not required.

(d) An initial supervision contract form must shall be filed along with the application form. A new supervision contract form is required to be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board.

(e) Supervision reports must shall be submitted at any time when the supervisor has concerns regarding the supervisee's performance, upon termination of supervision, and when there is a change in the conditions specified in the supervision contract form on file with the Board. Additional monitoring and reporting to the Board may be required in cases where previous evaluations or other information (e.g., reference letters, ethical complaints, etc.) suggest possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(f) Contract and report forms are provided by the Board.

Statutory Authority G.S. 90-270.5(c); 90-270.9.

.2008 PSYCHOLOGICAL ASSOCIATE

(a) A Psychological Associate is required to receive supervision for activities specified in G.S. 90-270.5(e) and 21 NCAC 54 .2006. Supervision shall be provided by an individual who is recognized as an appropriate supervisor as defined in Rule .2001 of this Section.

(b) A written, notarized supervision contract form shall be filed with the Board within 30 days from the date of licensure. A new contract form is required to be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board. A supervision contract form documents that either supervision is required and being received, or that supervision is not required.

(c) A supervisor shall report to the Board that agreed upon supervision has occurred and file a final report when supervision terminates. If not receiving supervision, it is the responsibility of the Psychological Associate to report such to the Board. A report is required to be submitted to

the Board within 30 days after receiving written notification from the Board that such is due. Additionally, a supervision report shall be submitted when there is a change in the conditions specified in the supervision contract on file with the Board.

(d) Additional monitoring and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggest possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(e) In all cases, the specific terms of the supervision arrangement are the responsibility of the supervising psychologist. The education, training, experience, and ongoing performance of the supervisee must be considered and the arrangement must be agreed to by both the supervisor and the supervisee. The frequency and comprehensiveness of supervision may, at the discretion of the supervising psychologist, be modified. Generally, such supervision shall occur weekly. However, in no case shall supervision occur less than one hour monthly. Ultimately, the supervising psychologist of record must adequately protect the welfare of the client and be consistent with North Carolina law and professional ethics.

(f) Contract and report forms are provided by the Board.

(g) Psychological Associates whose professional practice is limited to those activities other than those specified in G.S. 90-270.5(e) and 21 NCAC 54 .2006 as requiring supervision are not required to receive supervision.

(h) Psychological Associates who are employed by the State Department of Public Instruction or local boards of education, and whose professional activities are limited only to those for which they are employed by those agencies, are not required to receive supervision. This exemption does not apply to individuals who contract with the Department of Public Instruction or local boards of education for the delivery of psychological services which otherwise require supervision in the schools.

Statutory Authority G.S. 90-270.4(c); 90-270.5(e); 90-270.9.

.2009 LICENSED PSYCHOLOGIST

(a) To be issued a permanent license at the Psychologist level, an applicant shall document a minimum of two calendar years and 3000 hours of supervised practice, of which at least one calendar year and 1500 hours of supervised practice shall be accrued at the postdoctoral level.

(b) A psychologist who meets all other requirements for a permanent license except the two years of supervised experience shall be issued a provisional license at the Psychologist level and shall comply with supervision requirements specified in this Rule.

(c) Provisional licensees who are not practicing psychology are not required to receive supervision.

(d) Predoctoral supervised experience shall meet the criteria specified in 21 NCAC 54 .1803(a)(9) to be credited toward meeting one year of the required supervised experience.

(e) Postdoctoral supervised experience shall meet all of the following criteria:

- (1) At least one hour per week of face-to-face, individual supervision shall be provided.
- (2) One year of supervised experience shall consist of a minimum of one calendar year, include 1500 hours of supervised experience, and be completed within a consecutive four-year period.
- (3) Supervision shall be provided for the practice of psychology as defined by G.S. 90-270.2(8).
- (4) Supervision shall be provided by an individual who is recognized as an appropriate supervisor of licensees as defined in Rule .2001 of this Section.

(f) A written, notarized supervision contract form shall be filed with the Board within 30 days from the date of licensure. A new contract form is required to be filed within 30 days of a change in the conditions specified in the supervision contract form on file with the Board. A supervision contract form documents that either supervision is required and being received, or that supervision is not required.

(g) A supervisor shall report to the Board that agreed upon supervision has occurred and file a final report when supervision terminates. If not receiving supervision, it is the responsibility of the provisional licensee to report such to the Board. A report is required to be submitted to the Board within 30 days after receiving written notification from the Board that such is due. Additionally, a supervision report shall be submitted when there is a change in the conditions specified in the supervision contract on file with the Board.

(h) Additional monitoring and reporting to the Board may be required in cases where previous evaluations or other information (e.g. reference letters, ethical complaints, etc.) suggest possible problems in the supervisee's competence or adherence to ethical standards. Additional documentation or an interview may be required when questions arise regarding the supervisee's practice due to information supplied or omitted on supervision contract forms and reports or when required forms are not filed with the Board.

(i) Contract and report forms are provided by the Board.

Statutory Authority G.S. 90-270.5(d); 90-270.9.

SECTION .2100 - RENEWAL

.2101 LICENSE RENEWAL FORM

(a) The license renewal application form is mailed to each licensee in the fall of each even numbered year. It is a licensee's responsibility to renew his/her license in a timely manner, and to notify the Board if a renewal application form is not received.

(b) The form may require the licensee to supply information including, but not limited to, the following: current addresses; area of specialty; principal setting of practice; whether or not the licensee received any formal continuing education during the past year; report on all supervision contract forms on file with the Board ~~if licensed at the psychological associate or practicing psychologist temporary level.~~

(c) Failure of a postal service to deliver the renewal application properly, or failure of a licensee to submit all required information on the appropriate form by any established statutory deadline, does not excuse the late fee or prevent license suspension.

Statutory Authority G.S. 90-270.9; 90-270.14.

.2103 REINSTATEMENT

(a) The information required for each applicant requesting reinstatement of licensure within 30 days after a license has been suspended due to non-renewal consists of:

- (1) completed renewal application form;
- (2) completed supervision report form, if applicable; and
- (3) payment of the renewal and reinstatement fees.

The information listed in this Paragraph shall be filed in the Board office within 30 days after a license has been suspended due to non-renewal.

(b) ~~(a)~~ The information required for each applicant requesting reinstatement of licensure after a license has been suspended for more than 30 days due to non-renewal or after a license has been voluntarily relinquished with the Board's consent consists of:

- (1) typed, or legibly printed, notarized application form and supervision contract form;
- (2) completed information forms from present and past supervisors;
- (3) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;
- (4) verification and report on the status of licensure, including any disciplinary action which is pending or has been taken information forms sent directly from other states and provinces jurisdictions in which the applicant has applied for a license or has been licensed, if applicable; and
- (5) official graduate college transcripts, not on file in the Board's office, sent directly to the Board by the training institution(s); and institution(s).
- (6) payment of the renewal and reinstatement fees within 30 days after receiving notification from the Board that reinstatement of licensure has been approved.

An application must contain all requested materials to be complete. An incomplete application is active for three months from the date of application. At the end of such time, if still incomplete, the application is void, the appli-

~~cant is deemed to have discontinued the application process, and the applicant shall totally reapply.~~

~~(c) (b) Reexamination may be required for reinstatement.~~

~~(e) The applicant must remit a special fee of fifteen dollars (\$15.00) within 30 days after receiving notification from the Board that the application for reinstatement of licensure has been approved.~~

Statutory Authority G.S. 90-270.9; 90-270.15(f),(h).

SECTION .2200 - PROFESSIONAL CORPORATION

.2201 CORPORATE OR COMPANY NAME

The ~~corporate~~ name of a professional psychological corporation or professional limited liability company must either:

- (1) reflect the offering of psychological services by including the term "psychology", or any of its derivatives such as "psychologic", "psychological", or "psychologist", or be the same as one or more shareholders if only psychologists are shareholders, or
- (2) ~~reflect the offering of psychotherapeutic and related services or include the name of one or more of the psychologist shareholders if both psychologists and psychiatrists are shareholders.~~

The use of any other name, title, or identification must be clearly referenced to or identify the corporate or company name (e.g. ABC Psychological Associates doing business as XYZ Clinic; XYZ Clinic: A Division of ABC Psychological Associates). Use of such names, titles, or identification must be filed with the Board.

Statutory Authority G.S. 55B-5; 55B-14; 90-270.9.

.2202 CERTIFICATE OF REGISTRATION

The Board shall issue a certificate of registration to a professional corporation or professional limited liability company organized to render professional psychological services upon the submission and approval of the following:

- (1) notarized application for certificate of registration ~~of professional corporation to engage in the practice of psychology;~~
- (2) fifty dollars (\$50.00); and
- (3) certified copy by the Secretary of State of the Articles of Incorporation or Articles of Organization.

The certificate of registration shall remain effective until January 1 following the date of such registration.

Statutory Authority G.S. 55B-10; 90-270.9.

.2203 RENEWAL OF CERTIFICATE OF REGISTRATION

An application for renewal will be sent to each registered professional corporation and professional limited liability company prior to January 1. The Board shall renew the

certificate of registration ~~of a professional corporation~~ upon receipt of the completed written application of the holder, accompanied by a fee of twenty-five dollars (\$25.00). If the corporation or company does not apply for renewal of its certificate of registration before February 1, the certificate of registration shall be automatically suspended. It may be reinstated within the calendar year upon the payment of twenty-five dollars (\$25.00) plus a penalty of ten dollars (\$10.00).

Statutory Authority G.S. 55B-11; 90-270.9.

.2204 SUSPENSION OR REVOCATION OF CERTIFICATE OF REGISTRATION

~~The Board may suspend or revoke a certificate of registration issued by it to a professional psychological corporation in accordance with G.S. 55B-13.~~

Statutory Authority G.S. 55B-13; 90-270.9.

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to adopt rules cited as 21 NCAC 58A .0113, .0510; 58C .0311 - .0312; 58E .0310, and amend rules cited as 21 NCAC 58A .0104, .0107, .0302, .0401 - .0402, .0502 - .0506, .0610, .1702, .1708, .1711; 58C .0104, .0305 - .0307; 58E .0203 - .0204, .0302 - .0304, .0406 - .0407, .0411, .0503, .0511.

Proposed Effective Dates: March 1, 1996 for all rules except 21 NCAC 58A .0502 which is proposed for January 1, 1997.

A Public Hearing will be conducted at 2:00 pm on January 3, 1996 at the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC.

Reasons for Proposed Actions:

21 NCAC 58A .0104 - to codify the changes in the procedures for disclosing agency relationships.

21 NCAC 58A .0107 - to codify requirement for property owner association funds to be treated as trust monies.

21 NCAC 58A .0113 - to codify requirement for reporting criminal convictions.

21 NCAC 58A .0302 - to refine procedure for submitting license applications.

21 NCAC 58A .0401, .0402 - to refine procedure for scheduling, administering, and grading examinations.

21 NCAC 58A .0502 - to codify changes in licensing requirements for business entities engaging in real estate brokerage.

21 NCAC 58A .0503, .0504, .0505 - to refine procedures for license renewal and reinstatement.

21 NCAC 58A .0506 - to clarify that a salesman may only act under the supervision of one broker.

21 NCAC 58A .0510 - to codify the cancellation of a salesman license upon the issuance of a broker license.

21 NCAC 58A .0610 - to refine the procedure for issuing subpoenas.

21 NCAC 58A .1702, 1708, .1711 - to codify changes in requirements and procedures concerning continuing education for real estate brokers and salesmen.

21 NCAC 58C .0104, .0305, .0306, .0307 - to refine and clarify requirements and procedures for administering pre-licensing courses.

21 NCAC 58C .0311 - to codify the required principal instructional delivery methods to be used in pre-licensing courses.

21 NCAC 58C .0312 - to codify allowable deviations from Commission rules regarding the conduct of pre-licensing courses when the rules conflict with an instructor's obligation to comply with the Americans With Disabilities Act.

21 NCAC 58E .0203, .0204, .0302, .0303, .0304, .0406, .0407, .0411, .0503, .0511 - to codify changes in procedures and standards for the real estate continuing education program.

21 NCAC 58E .0310 - to codify the required principal instructional delivery methods to be used in continuing education elective courses.

Comment Procedures: Comments regarding these rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be sent to or delivered to Mr. Stephen L. Fussell % North Carolina Real Estate Commission, PO Box 17100, Raleigh, NC 27619-7100, so as to be received by December 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

.0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall be in writing, shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period.

(b) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement.

(c) Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction shall incorporate the "Description of Agent Duties and Relationships" prescribed by the Commission which shall be set forth in a clear and conspicuous manner and shall not include or be accompanied by any additional text which contradicts its meaning and substance. The "Description of Agent Duties and Relationships" shall read as follows:

DESCRIPTION OF AGENT DUTIES AND RELATIONSHIPS

Before you begin working with any real estate agent, you should know who the agent represents in the transaction. Every listing agreement, buyer agency agreement or other agreement for brokerage services in a real estate sales transaction in North Carolina must contain this "Description of Agent Duties and Relationships" [N.C. Real Estate Commission Rule 21 NCAC 58A .0104(c), eff. 7/1/95]. Real estate agents should carefully review this information with you prior to entering into any agency agreement.

AGENTS' DUTIES

When you contract with a real estate firm to act as your agent in a real estate transaction, the agent must help you obtain the best price and terms possible, whether you are the buyer or seller. The agent also owes you the duty to:

- Safeguard and account for any money handled for you
- Be loyal and follow reasonable and lawful instructions
- Act with reasonable skill, care and diligence
- Disclose to you any information which might influence your decision to buy or sell

Even if the agent does not represent you, the agent must still be fair and honest and disclose to you all "material facts" which the agent knows or reasonably should know. A fact is "material" if it relates to defects or other conditions affecting the property, or if it may influence your decision to buy or sell. *This does not require a seller's agent to disclose to the buyer the minimum amount the seller will accept, nor does it require a buyer's agent to disclose to the seller the maximum price the buyer will pay.*

AGENTS WORKING WITH SELLERS

A seller can enter into a "listing agreement" with a real estate firm authorizing the firm and its agent(s) to represent the seller in finding a buyer for his property. The listing agreement should state what the seller will pay the listing firm for its services, and it may require the seller to pay the firm no matter who finds the buyer.

The listing firm may belong to a listing service to expose the seller's property to other agents who are members of the service. Some of those agents may be working with buyers as buyers' agents; others will be working with buyers but still representing the sellers' interests as an agent or "subagent." When the buyer's agents and seller's subagents desire to share in the commission the seller pays to the listing firm, the listing agent may share the commission with the seller's permission.

AGENTS WORKING WITH BUYERS

A buyer may contract with an agent or firm to represent him (as a **buyer's agent**), or may work with an agent or firm that represents the seller (as a **seller's agent or subagent**). All parties in the transaction should find out at the beginning who the agent working with the buyer represents.

If a buyer wants a buyer's agent to represent him in purchasing a property, the buyer should enter into a "buyer agency agreement" with the agent. The buyer agency agreement should state how the buyer's agent will be paid. **Unless some other arrangement is made which is satisfactory to the parties, the buyer's agent will be paid by the buyer.** Many buyer agency agreements will also obligate the buyer to pay the buyer's agent no matter who finds the property that the buyer purchases.

A buyer may decide to work with a firm that is acting as agent for the seller (a **seller's agent or subagent**). If a buyer does not enter into a buyer agency agreement with the firm that shows him properties, that firm and its agents will show the buyer properties as an agent or subagent working on the seller's behalf. Such a firm represents the seller (not the buyer) and must disclose that fact to the buyer.

A seller's agent or subagent must still treat the buyer fairly and honestly and disclose to the buyer all material facts which the agent knows or reasonably should know. The seller's agent typically will be paid by the seller. **If the agent is acting as agent for the seller, the buyer should be careful not to give the agent any information that the buyer does not want the seller to know.**

DUAL AGENTS

A real estate agent or firm may represent more than one party in the same transaction only with the knowledge and consent of all parties for whom the agent acts. "Dual Agency" is most likely to occur when a buyer represented by a buyer's agent wants to purchase a property listed by that agent's firm. A dual agent must carefully explain to each party that the agent and the agent's firm are also acting for the other party.

In any dual agency situation, the agent must obtain a written agreement from the parties which fully describes the obligations of the agent and the agent's firm to each of them.

Immediately after the "Description of Agent Duties and Relationships", every listing and buyer agency agreement shall contain the following provision, including a box which the agent shall check when the provision is applicable: "☐ This firm represents both sellers and buyers. This means that it is possible that a buyer we represent will want to purchase a property owned by a seller we represent. When that occurs, the agent and firm listed above will act as **dual agents** if all parties agree."

(d) A broker or brokerage firm representing one party in a transaction shall not undertake to represent another party in the transaction without the express, written authority of each party.

(e) In every real estate sales transaction, a broker or salesman working directly with a prospective buyer as a seller's agent or subagent shall disclose to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesman represents the interests of the seller. The broker or salesman shall make the disclosure on the "Disclosure to Buyer from Seller's Agent or Subagent" form prescribed by the Commission. If the first substantial contact is by telephone, electronic, or other means, the broker or salesman shall mail or transmit a copy of this form to the buyer immediately, but in no event later than three days thereafter.

(f) In every real estate sales transaction, a broker or salesman representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesman represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesman shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesman representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

Statutory Authority G.S. 93A-3(c).

.0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a broker acting in his fiduciary capacity shall be deposited in a trust or escrow account not later than three banking days following receipt of such monies except that earnest money deposits received on offers to purchase real estate and tenant security deposits received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesman shall be delivered immediately to the broker by whom he is employed.

(b) In the event monies received by a broker while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, such broker shall first secure from all parties having an interest in the monies written authorization for the deposit of such monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account".

(e) A broker shall maintain and retain records sufficient to verify the accuracy and proper use of his trust or escrow accounts, including, but not limited to:

- (1) bank statements;
- (2) canceled checks which shall be referenced to the corresponding transaction or owner ledger sheet;
- (3) deposit tickets and, if necessary, a supplemental worksheet for each deposit ticket identifying the property and the parties to each transaction for which funds are deposited;
- (4) a separate ledger sheet for each sales transaction and for each owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular transaction or owner of property;
- (5) a journal or check stubs identifying each transaction and showing a running balance for all funds

in the account;

- (6) copies of contracts, leases and management agreements;
- (7) closing statements and property management statements; and
- (8) any other documents necessary and sufficient to verify and explain record entries.

A broker shall maintain records of all receipts and disbursements of trust or escrow monies in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. A broker must reconcile ledger sheets and his journals or check stubs to the trust or escrow account bank statements on a monthly basis. A broker shall create a worksheet for each such monthly reconciliation and retain it as part of his records.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a broker, the broker shall retain said deposit in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(h) A broker may transfer earnest money deposits in his possession collected in connection with a sales transaction to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A broker or salesman shall not disburse prior to settlement any earnest money in his possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained or disbursed by a licensee of the Commission, are trust monies and shall be treated as such in the manner required by this Rule.

Statutory Authority G.S. 93A-3(c).

.0113 REPORTING CRIMINAL CONVICTIONS

Any broker or salesman who is convicted of any criminal offense (other than a minor traffic offense) must file with the Commission a written report of such conviction within 60 days of the final judgment in the case. A form for this report is available from the Commission.

Statutory Authority G.S. 93A-3(c); 93A-6(b)(2).

SECTION .0300 - APPLICATION FOR LICENSE

.0302 FILING AND FEES

(a) Properly completed applications must be received in the Commission's office or postmarked not later than the

filing date established by the executive director for a scheduled examination and must be accompanied by the appropriate fee. Once the application has been filed and processed, the application fee may not be refunded.

(b) The following fees shall be charged:

- (1) application for new broker license . . . \$30.00,
- (2) application for new salesman license . . . \$30.00.

(c) The Commission may require an applicant to update information provided in connection with an application or to submit a newly completed application form as may be necessary to assure that the information provided is current. Failure to submit the required information within 60 days shall result in cancellation of the application.

Statutory Authority G.S. 93A-4(a),(d).

SECTION .0400 - EXAMINATIONS

.0401 TIME AND PLACE

(a) Examinations for broker's and salesman's licenses will be scheduled at such times and places as determined by the executive director. Applicants will be scheduled for examination based on the date of application filing in accordance with the Commission's published schedule of examination dates and application filing dates. Applicants will be given written notice of when and where to appear for examination.

(b) Except as provided in Paragraph (c) of this Rule, an applicant who has been scheduled for a particular examination date will not be rescheduled for a later examination date without filing another application and fee unless a request to be rescheduled is made at least 15 days in advance of the scheduled examination date. A scheduled examination date may only be postponed until one of the next two following scheduled examination ~~dates~~ dates, even if the postponement is due to an excused absence. A request to postpone a scheduled examination date without filing another application and fee will be granted only once unless the applicant satisfies the requirements for obtaining an excused absence stated in Paragraph (c) of this Rule.

(c) An applicant may be granted an excused absence from a scheduled examination if he provides evidence satisfactory to the Commission that his absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen by the applicant. A request for an excused absence must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the examination date will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from taking the examination. An applicant is limited to three excused absences without filing another application and fee.

Statutory Authority G.S. 93A-4(b),(d).

.0402 SUBJECT MATTER AND PASSING SCORES

(a) The salesman and broker examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the real estate license law, rules of the Commission, and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) In order to pass the salesman or broker examination, an applicant must attain a score equal to at least 75 percent of the total point value for the questions on the examination. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score. A passing examination score obtained by a license applicant shall be recognized as valid for a period of one year from the date of examination, during which time the applicant must fully satisfy any remaining requirements for licensure that were pending at the time of examination; provided that the running of the one-year period shall be tolled by issuance of a notice of hearing regarding the applicant's qualifications for licensure until a final agency decision is rendered pursuant to G.S. 150B-42. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

Statutory Authority G.S. 93A-4(b),(d).

SECTION .0500 - LICENSING

.0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity which changes its business form shall be required to submit a new application. Incomplete applications shall not be acted upon by the Commission. Application forms for ~~corporations~~ partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and ~~call for such information as the corporate name~~, shall set forth the name of the entity, the name under which the entity will do business, the address of its principal office, and a list of all brokers and salesmen associated with the entity.

- (1) The application of any partnership, including a general partnership, limited partnership and limited liability partnership, shall also call for such information as a copy of its written partner-

ship agreement or if no written agreement exists, a written description of the rights and duties of the several partners, a copy of any Certificate of Limited Partnership as may be required by law, past conviction of criminal offenses of any general or limited partner, past revocation, suspension, or denial of a business or professional license of any general or limited partner, and the name and residence address of each general and limited partner.

(2) The application of a limited liability company shall also call for such information as a copy of its Articles of Organization evidencing its authority to engage in the business of real estate brokerage, past conviction of criminal offenses of any manager or member, past revocation, suspension, or denial of a business or professional license of any manager or member, and the name and residence address of each manager or member.

(3) The application of a corporation shall also call for such information as a copy of its Articles of Incorporation evidencing its authority to engage in the business of real estate brokerage, and shall call for such information as past conviction of criminal offenses of any corporate director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class, past revocation, suspension, or denial of a business or professional license to any director, officer, employee or shareholder who owns ten percent or more of the outstanding shares of any class, the name and residence address of each director and officer of the corporation, and the name and address of each person, partnership, corporation, or other entity owning ten percent or more of the outstanding shares of any class.

(4) The application of any other business entity shall also call for such information as a copy its organizational documents evidencing its authority to engage in real estate brokerage, past conviction of criminal offenses of any principal in the company, past revocation, suspension or denial of a business or professional license of any principal, and the name and residence address of each principal. For purposes of this paragraph, the term "principal" shall mean any person or entity who owns or controls the business entity to any extent, whether officer, director, manager, member, partner or other.

(b) A foreign ~~corporation~~ business entity shall further qualify by filing with its application for license a copy of its ~~any~~ certificate of authority to transact business in this state issued by the North Carolina Secretary of State ~~in accordance with G.S. 55-15-01 which may be required by law~~ and a consent to service of process and pleadings which

shall be ~~authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the general partners, managers or board of directors authorizing the proper partner, manager or officers officer to execute said consent.~~

(c) After filing a written application with the Commission and upon a showing that at least one ~~executive officer~~ principal of said ~~corporation~~ business entity holds a broker's license on active status and in good standing and will serve as principal broker of the ~~corporation~~ entity, the ~~corporation~~ entity shall be licensed provided it appears that the [applicant] ~~corporation~~ entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The principal broker of a partnership of any kind must be a general partner of the partnership, the principal broker of a limited liability company must be a manager of the company, and the principal broker of a corporation must be an officer of the corporation.

(d) The licensing of a business entity ~~corporation~~ shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, and employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed ~~corporation~~ entity.

(e) The principal broker of a ~~corporation~~ business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the ~~corporation~~ entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the ~~corporation~~ entity;
- (3) the proper display of the real estate license certificate of the ~~corporation~~ entity at the principal office of the ~~corporation~~ entity at which real estate brokerage activities are conducted and a photocopy of such license at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the ~~corporation~~ entity and the registration of any assumed business name adopted by the ~~corporation~~ entity for its use; and
- (5) notifying the Commission in writing of any change of his status as principal broker within ten days following the change.

(f) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conforming to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

Statutory Authority G.S. 93A-3(c); 93A-4(a),(b),(d).

.0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED

(a) All real estate broker, salesman or corporate broker licenses issued by the Commission under Article 1, Chapter 93A of the General Statutes shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of thirty dollars (\$30.00).

(b) ~~Beginning in 1995, any~~ Any person desiring to renew his license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(d) Any person or corporation which engages in the business of a real estate broker or salesman while his or its license is expired is subject to the penalties prescribed in Chapter 93A of the General Statutes.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6.

.0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of Chapter 93A of the General Statutes of North Carolina or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Upon initial licensure, a salesman's license shall be assigned by the Commission to inactive status and the license of a broker or corporate broker shall be assigned to

active status. The license of a broker, salesman or corporate broker shall be assigned by the Commission to inactive status upon the written request of the licensee. A salesman's license shall be assigned by the Commission to inactive status when the salesman is not under the active, personal supervision of a broker-in-charge. A corporate broker's license shall be assigned by the Commission to inactive status when the corporation does not have a principal broker. A broker or salesman shall also be assigned to inactive status if, upon the second renewal of his license following initial licensure, or upon any subsequent renewal, he has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A salesman with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506(b) of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the broker, ~~a list of Commission approved continuing education courses completed by the broker within the previous 30 days,~~ a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his real estate brokerage activities pending receipt of the written acknowledgement from the Commission. If the broker is notified that he is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

Statutory Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6.

.0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR SUSPENDED LICENSE

(a) Licenses expired for not more than 12 months may be reinstated upon proper application and payment of the thirty dollar (\$30.00) renewal fee plus five dollar (\$5.00) late filing fee. In order to reinstate such license on active status ~~for a license period beginning on or after July 1, 1995,~~ the applicant shall also present evidence satisfactory to the Commission of having obtained such continuing education as is required by Rule .1703 of this Subchapter to change an inactive license to active status. A person reinstating such a license on inactive status shall not be required to have obtained any continuing education in order to reinstate such license; however, in order to subsequently change his

reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 of this Subchapter.

(b) Reinstatement of licenses expired for more than 12 months may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the Commission that they possess the current knowledge, skills and ~~competence~~ competence, as well as the truthfulness, honesty and integrity, necessary to function in the real estate business in a manner that protects and serves the public interest. ~~In this regard, To demonstrate current knowledge, skills and competence,~~ the Commission may require such applicants to complete real estate education or pass the license examination or both.

(c) Reinstatement of a revoked license may be considered upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than 12 months.

(d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) may be considered upon termination of the period of surrender specified in the order approving the surrender and upon proper application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than 12 months.

(e) A suspended license shall be reinstated at the end of the period of active suspension upon payment of the license renewal fee for the current license period; however, in order for the license to be reinstated on active status, the licensee shall be required to also demonstrate that he has satisfied the continuing education requirement for license activation prescribed by Rule .1703 of this Subchapter.

Statutory Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A.

.0506 SALESMAN TO BE SUPERVISED BY BROKER

(a) A salesman may engage in or hold himself out as engaging in activities requiring a real estate license only while his license is on active status and he is supervised by the broker-in-charge of the real estate firm or office where the salesman is associated. A salesman may be supervised by only one broker-in-charge at a time.

(b) Upon a salesman's association with a real estate broker or brokerage firm, the salesman and the broker-in-charge of the office where the salesman will be engaged in the real estate business shall immediately file with the Commission a salesman supervision notification on a form prescribed by the Commission containing identifying information about the salesman and the broker-in-charge, a statement from the broker-in-charge certifying that he will supervise the salesman in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesman and broker-in-charge. If the

salesman is on inactive status at the time of associating with a broker or brokerage firm, the salesman and broker-in-charge shall also file, along with the salesman supervision notification, the salesman's request for license activation on a form prescribed by the Commission containing identifying information about the salesman, ~~a list of Commission-approved continuing education courses completed by the salesman within the previous 30 days,~~ the salesman's statement that he has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesman and the salesman's proposed broker-in-charge. Upon the mailing or delivery of the required form(s) ~~by the broker-in-charge,~~ the salesman may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesman and broker-in-charge do not receive from the Commission a written acknowledgment of the salesman supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesman's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesman and broker-in-charge are notified that the salesman is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesman to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesman supervision notification and request for license activation is submitted to the Commission.

(c) A broker-in-charge who certifies to the Commission that he will supervise a licensed salesman shall actively and personally supervise the salesman in a manner which reasonably assures that the salesman performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesman as prescribed in this Rule may be subject to disciplinary action by the Commission.

(d) Upon termination of his supervision of a salesman, a broker-in-charge shall immediately:

- (1) notify the Commission in writing setting forth the date of termination; and
- (2) give the salesman, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased or rented for others by the salesman while under the supervision of the broker-in-charge.

Statutory Authority G.S. 93A-2(b); 93A-3.

.0510 CANCELLATION OF SALESMAN LICENSE UPON BROKER LICENSURE

When a person holding a salesman license is issued a broker license, the person's salesman license shall be automatically cancelled.

Statutory Authority G.S. 93A-3(c); 93A-4(d).

SECTION .0600 - REAL ESTATE COMMISSION HEARINGS

.0610 SUBPOENAS

(a) ~~The Executive Director of the Commission and its Legal Counsel shall have the authority to issue subpoenas in the name of the Commission. In the Executive Director's absence, the recording secretary of the Commission shall have the authority to issue subpoenas in the name of the Commission.~~ Subpoenas issued in preparation for, or in the conduct of, a contested case pending before the Commission shall be issued in the name of the Commission and shall be signed by the chairman, vice chairman, the officer presiding at the hearing if a member of the Commission other than the chairman or vice chairman has been designated to preside, or the Commission's executive director or legal counsel.

(b) ~~The Commission member designated to preside over a contested case shall also have the authority to issue subpoenas relating to that contested case. After a notice of hearing in a contested case has been issued and served upon a respondent or, in a case concerning an application for licensure, the applicant, the respondent, or the attorney for the respondent or applicant may request subpoenas for the attendance of witnesses and the production of evidence. The subpoenas may be signed by the respondent or applicant, or the respondent's or applicant's attorney.~~

(c) All subpoenas issued in connection with a contested case pending before the Commission shall be on a form approved by the Commission. Subpoena forms shall be provided by the Commission without charge upon request.

(d) Motions to quash a subpoena issued in preparation for, or in connection with, a contested case pending before the Commission shall be submitted to the Commission in writing and shall clearly state the grounds therefor. The disposition of any motion to quash a subpoena shall be made by the chairman of the Commission in his discretion. If the chairman is unavailable, then the vice chairman or other Commission member designated to preside over the hearing may dispose of such a motion in the chairman's place.

Statutory Authority G.S. 93A-6(a); 150B-38(h).

SECTION .1700 - MANDATORY CONTINUING EDUCATION

.1702 CONTINUING EDUCATION REQUIREMENT

(a) In order to renew a broker or salesman license on active status ~~for a license period beginning on or after July 1, 1995,~~ the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission. Four of the required

eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses covering acceptable subject matter as described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission.

(b) No continuing education shall be required to renew a broker or salesman license on inactive status; however, to change a license from inactive status to active status, the licensee must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the North Carolina General Assembly to renew his license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. The term "initial licensure" means the first time that a license of a particular type is issued to a person. Thus, issuance of a broker license to a person previously licensed as a salesman is considered to be initial licensure; however, reinstatement of an expired, revoked or suspended license does not constitute initial licensure.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1708 EQUIVALENT CREDIT

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licensee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a nonrefundable evaluation fee of thirty dollars (\$30.00) for each request for evaluation of a course or real estate education activity. Such requests and all supporting documents, with the exception of applications from instructors of continuing education courses desiring equivalent credit for teaching Commission-approved continuing education courses, must be received by the Commission at least 60 days prior to the expiration of the licensee's current license. In order for requests for equivalent credit to be considered and credits to be entered into a licensee's continuing education record prior to the June 30 license expiration date, such requests and all supporting documents must be received by the Commission on or before June 10 preceding expiration of the licensee's current license, with the exception that requests from instructors desiring equivalent credit for teaching Commission-approved continuing education courses must be received by June 30. Any equivalent continuing education credit awarded under this Rule will be applied first to make up any continuing education deficiency for the previous two license periods and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an

approved elective course, that was completed during a previous license period may not be applied to a subsequent license period.

(b) The Commission may award continuing education elective credit for completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal. ~~Each activity for which continuing education credit is requested must have been completed within the current license period.~~ The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for ~~the license period in which the instructor teaches the course for the first time~~ teaching a course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. ~~The instructor must provide proof that he taught the course within the current license period.~~ Licensees who are instructors of continuing education courses approved by the Commission shall not be subject to the thirty dollar (\$30.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate preclicensing course.

(e) No carry-over credit to a subsequent license period shall be awarded for taking an unapproved continuing education course or for any real estate education activity other than teaching an approved elective course.

(f) A licensee completing a real estate appraisal preclicensing, precertification or continuing education course approved by the North Carolina Appraisal Board may obtain real estate continuing education elective credit for such course by submitting to the Commission a written request

for equivalent continuing education elective credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) and a copy of the certificate of course completion issued by the course sponsor for submission to the North Carolina Appraisal Board. ~~Such appraisal course must have been completed during the license period for which the request for equivalent credit is made.~~

Statutory Authority G.S. 93A-3(c); 93A-4A.

.1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES

(a) Real estate brokers and salesmen licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status ~~for a license period beginning on or after July 1, 1995~~ may fully satisfy the continuing education requirement by any one of the following means: completing, within one year preceding license expiration, either the Commission-prescribed update course plus four classroom hours of instruction in Commission-approved continuing education courses or eight classroom hours of instruction in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit ~~for a continuing education course completed in another state and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per course and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.~~

- (1) A nonresident licensee may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the licensee holds such license.
- (2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus four classroom hours of instruction in Commission-approved continuing education elective courses.
- (3) A nonresident licensee may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per request and evidence satisfactory to the Commission that the course

was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.

- (4) A nonresident licensee may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident licensee for an unapproved course or educational activity is 8 hours.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than 12 months, a nonresident broker or salesman may ~~take continuing education courses approved by the real estate licensing agency in his state of residence or another state to fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule.~~

(e) ~~In addition to the options described in Paragraphs (a) and (b) of this Rule for satisfying the continuing education requirement, a nonresident licensee may request that the Commission award continuing education credit for a course not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section.~~

(c) ~~(d)~~ No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION

SECTION .0100 - SCHOOLS

.0104 SCOPE, DURATION AND RENEWAL OF APPROVAL

(a) Approval extends only to the courses and location reported in the application for school approval.

(b) Commission approval of schools shall terminate on ~~the~~ second December 31 in the next odd-numbered year following the effective date of approval.

(c) Schools must renew their approval to conduct real estate pre-licensing courses by satisfying the criteria for original approval described in Rule .0103 of this Section. In order to assure continuous approval, renewal applications shall be filed with the Commission biennially on or before November 15 in the year that approval terminates.

Statutory Authority G.S. 93A-4(a),(d); 93A-75(a).

SECTION .0300 - PRE-LICENSING COURSES

.0305 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates, and schools may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0304(c) of this Section.

(b) Real estate pre-licensing courses may not have class meetings that exceed six classroom hours in any given day and 18 classroom hours in any given seven-day period. If a school desires to conduct a course with class meetings that will be held on consecutive days and involve more than three classroom hours on any of the consecutive days, the school must obtain advance approval of the course schedule from the Commission. To obtain approval of such a proposed course schedule, the school must demonstrate to the satisfaction of the Commission that the proposed schedule provides sufficient time for the required instruction to be provided by a combination of classroom instruction and out-of-class textbook reading and other assignments. To determine the acceptability of such a proposed course schedule, the Commission shall consider the instruction that is required for the course under Commission rules, the total number of scheduled classroom hours for the course, the length and frequency of proposed individual class meetings and the amount of out-of-class study time available to students.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

Statutory Authority G.S. 93A-4(a),(d).

.0306 TEXTBOOKS

Each course must utilize a textbook or course materials which are approved by the Commission as well as any additional instructional materials which may be prescribed by the Commission for such course. Instructors shall make appropriate out-of-class reading assignments in the selected textbook and any additional prescribed instructional materials and shall actively encourage students to perform such reading assignments.

Statutory Authority G.S. 93A-4(a),(d); 93A-33; 93A-75(a).

.0307 REAL ESTATE INSTRUCTORS

(a) Except as indicated in Paragraph (b) of this Rule, all real estate pre-licensing courses must be taught by instructors who possess good moral character and either the minimum real estate education and experience qualifications listed in this Rule for each course or other qualifications that are found by the Commission to be equivalent to those listed. These qualification requirements must be met on a continuing basis. For a previously approved instructor,

experience in teaching a North Carolina real estate pre-licensing course may be substituted for any required experience in real estate brokerage, real estate law practice, or mortgage lending when a school is seeking continued approval of the instructor to teach such course.

- (1) Fundamentals of Real Estate: A current North Carolina salesman or broker license ~~in good standing~~ a current continuing education record, 120 classroom hours of real estate education excluding company or franchise in-service sales training, and two years' full-time general real estate brokerage experience within the previous five years.
- (2) Real Estate Law: A license to practice law in North Carolina and either experience in closing at least ten real estate sales transactions within the previous three years or completion of a real estate practice course in law school.
- (3) Real Estate Finance: One year full-time experience within the previous three years as a mortgage loan officer specializing in first mortgage loans, or two years' full-time experience within the previous three years as a general loan officer with an institution which makes a substantial number of first mortgage loans, or a current North Carolina broker license ~~in good standing~~ license, a current continuing education record, and a minimum of five years' full-time general real estate brokerage experience within the previous seven years.
- (4) Real Estate Brokerage Operations: A current North Carolina broker license ~~in good standing~~ license, a current continuing education record, 120 classroom hours of real estate education excluding company or franchise in-service sales training, and three years' full-time general real estate brokerage experience within the previous five years including at least one year as broker-owner, designated broker-in-charge or managing broker of a multi-agent real estate firm or office.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-half of any course, provided that no one individual guest lecturer may teach more than one-third of any course, and provided further that each guest lecturer possesses experience directly related to the particular subject area he is teaching.

(c) Instructors shall conduct courses in accordance with the Commission's rules and course syllabi. Instructors shall conduct themselves in a professional and courteous manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates a mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropri-

ate voice inflection, grammar and vocabulary.

- (2) The ability to present an effective visual image to a class, including appropriate appearance and physical mannerisms.
- (3) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students.
- (4) The ability to effectively utilize varied instructional techniques in addition to straight lecture, such as class discussion, role playing or other techniques.
- (5) The ability to effectively utilize instructional aids, such as the overhead projector, to enhance learning.
- (6) The ability to maintain an appropriate learning environment and effective control of a class.
- (7) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Commission, a school must submit to the Commission a videotape(s) depicting an approved instructor designated by the Commission teaching portions of an approved course specified by the Commission. The videotape(s) must have been made within 12 months of the date of submission, must be in VHS format, must include a label identifying the instructor and dates of the videotaped instruction, and must have visual and sound quality sufficient to allow viewers to clearly see and hear the instructor.

Statutory Authority G.S. 93A-4(a),(d); 93A-33.

.0311 INSTRUCTIONAL DELIVERY METHODS

The principal instructional delivery method utilized in real estate pre-licensing courses must provide for the instructor to interact with students either in person in a traditional classroom setting or through an interactive television system or comparable system which permits continuous mutual audio and visual communication between the instructor and all students and which provides for appropriate monitoring and technical support at each site where the instructor or students are located. The use of media-based instructional delivery systems such as videotape, remote non-interactive television, computer-based instructional programs or similar systems not involving continuous mutual audio and visual communication between instructor and students may be employed only in a limited manner to enhance or supplement personal teaching by the instructor. No portion of a course may consist of correspondence instruction.

Statutory Authority G.S. 93A-3(c); 93A-4(a).

.0312 EXCEPTION FOR PERSONS WITH DISABILITIES

Schools may deviate from Commission rules concerning student attendance, course scheduling, instructional methods, instructional materials, facilities or similar matters as may be necessary in order for a school to comply with the Americans With Disabilities Act or other laws requiring such schools to accommodate persons with disabilities; provided that no deviations from Commission rules are permitted by this rule with regard to program structuring, course content, academic course completion standards, or instructors. A school providing a special accommodation for a student with a disability that requires the school to deviate from Commission rules shall notify the Commission in writing of the accommodation within ten days of the start of the course in which the student is enrolled.

Statutory Authority G.S. 93A-3(c).

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0200 - UPDATE COURSE INSTRUCTORS

.0203 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) A person seeking original approval as an update course instructor must make application on a form prescribed by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee is required. All required information regarding the applicant's qualifications must be submitted.

(b) The applicant must be truthful, honest and of high integrity.

(c) The applicant must be qualified under one of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of real estate.
- (2) Possession of a current North Carolina real estate broker license, three years active full-time experience in real estate brokerage within the previous ten years, and 30 classroom hours of real estate education, excluding prelicensing education, within the past three years, such education covering topics which are acceptable under Commission rules for continuing education credit.
- (3) Possession of a current North Carolina real estate broker license and experience teaching at least ten real estate prelicensing courses within the previous five years.
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years, with a substantial emphasis on real estate practice.

- (5) Possession of qualifications found by the Commission to be equivalent to one or more of the above standards, provided that the requirement for a current North Carolina real estate broker license shall be waived only for applicants who qualify under Subparagraph (c)(1) or (4) of this Rule.

(d) The applicant must possess good teaching skills as demonstrated on a videotape portraying the instructor teaching a live audience. The applicant must submit for Commission review a videotape in VHS format. The videotape must be 45-60 minutes in length and must depict a continuous block of instruction on a single real estate or directly related topic. The videotape must be unedited, must show at least a portion of the audience, and must have visual and sound quality sufficient to enable reviewers to clearly see and hear the instructor. The videotape must have been made within the previous three years. The videotape must demonstrate that the instructor possesses the teaching skills described in Rule .0509 of this Subchapter.

(e) An applicant shall be exempt from qualifying under Paragraphs (c) and (d) of this Rule if he possesses a current North Carolina real estate broker license and a current designation as a ~~Designated~~ Distinguished Real Estate Instructor (DREI) granted by the Real Estate Educators Association.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0204 RENEWAL OF APPROVAL

Commission approval of update course instructors expires on the next December 31 following issuance of ~~approval, except that approval of instructors approved prior to January 1, 1995 shall expire on December 31, 1995~~ approval. In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form prescribed by the Commission on or before December 1 immediately preceding expiration of their approval. Applicants must satisfy the criteria for original approval, with the exception of the requirement stated in Rule .0203(d) of this Section, in order to renew their approval.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0300 - ELECTIVE COURSES

.0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesman must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the ap-

proved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided that no ~~courses~~ sessions of an approved course may be conducted for real estate continuing education credit between June 11 and June 30, inclusive, of any approval period. Any sponsor who conducts a session of an approved elective course between June 11 and June 30 must advise students no later than the beginning of the course that the Commission will not award credit for that course session. Sponsors conducting any special advertising or promotion of a continuing education course session to be held between June 11 and June 30 shall not state or represent in any manner that the course is approved for continuing education credit by the North Carolina Real Estate Commission.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0303 APPLICATION FOR ORIGINAL APPROVAL

An entity seeking original approval of a proposed elective course must make application on a form prescribed by the Commission. ~~Applications for original approval will not be accepted between April 1 and June 30 of any calendar year, provided that this restriction shall not apply when an applicant is seeking approval to conduct a course for which approval has already been obtained by another sponsor.~~ The applicant must submit a nonrefundable fee of one hundred dollars (\$100.00) per course which may be in the form of a check payable to the North Carolina Real Estate Commission; provided, however, that no fee is required if the entity making application is a community college, junior college, college or university located in this State and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable.
- (2) The applicant must satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors.
- (3) The subject matter of the course must satisfy the

elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate.

- (4) The course must involve a minimum of two classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time.
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter must be truthful, honest and of high integrity. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval.
- (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section.
- (7) ~~The course must be one that will be conducted by a qualified instructor who will be able to interact directly either in person or by interactive television with all students at all times during the course. The course may be conducted through the use of interactive television which permits continuous mutual communication between the instructor and all students, continuous observation of the instructor by all students, and continuous observation of all students by the instructor. The use of media-based instruction such as videotape, remote non-interactive television, computer programs or similar types of instruction may be employed on a limited basis to enhance or supplement personal instruction. No portion of the course may consist of correspondence instruction. The instructional delivery methods to be utilized in the course must comply with the requirements described in Rule .0310 of this Section.~~
- (8) The applicant must submit an instructor guide that includes:
 - (a) a detailed course outline,
 - (b) the amount of time to be devoted to each major topic and to breaks,
 - (c) the learning objective(s) for each major topic, and
 - (d) the instructional methods and instructional aids that will be utilized in the course.

The proposed time allotments must be appropriate for the proposed subject matter to be taught. Unless the applicant can demonstrate that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student attentiveness and learning. Examples of instructional methods and instructional aids that may be appropriate include, but

are not limited to, class discussion, role-playing, in-class work assignments, overhead transparencies and videotape.

- (9) The course must include handout materials for students unless the applicant can demonstrate that such materials are either inappropriate or unnecessary for the course. Such materials must be current, accurate, grammatically correct, logically organized and produced in a manner that reflects reasonable quality.
- (10) Either the instructor guide or the student materials must describe, in narrative form, the details of the substantive information to be presented in the course. The substantive information to be presented must be provided in sufficient detail to demonstrate that the information is current, accurate, complete, and otherwise appropriate.
- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder.
- (12) Applicants requesting approval of a computer-based instructional program need not comply with the requirements stated in Items (8), (9) and (10) of this Rule; however, such applicants must submit a written course plan that includes a detailed course outline, the minimum amount of time required for a typical licensee to complete each lesson and the entire course, and the learning objective(s) for each major topic. The minimum time prescribed for completion of each lesson and the entire course must be reasonable and appropriate for the proposed subject matter to be taught. Such applicants must also submit a complete copy of the instructional program on the medium that is to be utilized and must make available, at a date and time satisfactory to the Commission and at the sponsor's expense, all hardware and software necessary for the Commission to review the submitted instructional program. The information in the instructional program must be current, accurate, complete, grammatically correct and logically organized. The instructional program must also be produced in a manner that reflects reasonable quality and must comply with the requirements of Rule .0310 of this Section and any other applicable rules.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0310 INSTRUCTIONAL DELIVERY METHODS

The principal instructional delivery method utilized in elective courses must be one or more of the following:

- (1) Personal teaching by an instructor in a traditional

classroom setting; or

- (2) Instruction through an interactive television system or comparable system which permits continuous audio and visual communication between the instructor and all students and which provides for appropriate monitoring and technical support at each site where the instructor or students are located; or

- (3) Instruction through an interactive computer-based instructional program which provides for control of student progress through the educational materials by testing to assure student mastery of the subject matter at the end of each lesson, monitoring of time devoted to each lesson by the computer with automatic program shutdown after an appropriate period of nonactivity by the student, and a monitoring system which assures that the student receiving continuing education credit for completing the program actually performed all the work required to complete the program.

The use of passive or non-interactive instructional delivery systems such as videotape, remote non-interactive television or similar systems may be employed only in a limited manner to enhance or supplement one of the acceptable instructional delivery methods previously described in this Rule. No portion of a course may consist of correspondence instruction.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

.0406 COURSE COMPLETION REPORTING

(a) Course sponsors must complete a roster of all real estate licensees enrolled in an approved continuing education course and a course completion report prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Sponsors may allow students to complete portions of the course completion report, but Such reports shall be completed on forms prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information on such report reports. Sponsors must submit these documents reports to the Commission in a manner that will assure receipt by the Commission within fifteen calendar days following the course, but in no case later than June 15 for courses conducted prior to that date. These documents shall be completed on forms prescribed by the Commission.

(b) Course At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form prescribed by the Commission. Sponsors must submit the

completed evaluation forms to the Commission with the reports verifying completion of a continuing education course within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his proof of having completed the course.

(d) ~~Course sponsors shall advise the Commission in writing when~~ When a licensee in attendance at a continuing education course does not comply with the Commission's attendance or student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses on forms prescribed by the Commission, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar (\$5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form prescribed by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0407 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the sponsor must submit to the Commission, along with the ~~roster, course completion~~

~~reports and evaluation forms~~ required to be submitted by Rule .0406 of this Section, a fee in the amount of five dollars (\$5.00) for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705. This fee is not required if the sponsor is a community college, junior college, college or university located in North Carolina and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. This fee may be paid by check payable to the North Carolina Real Estate Commission. A separate check is required for each separate class session.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0411 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Commission approval of all continuing education elective courses and update course sponsors expires on the next June 30 following the date of issuance. In order to assure continuous approval, applications for renewal of Commission approval, accompanied by the prescribed renewal fee, must be filed on a form prescribed by the Commission annually on or before ~~March 31~~ April 30. Any incomplete application for renewal of continuing education course and sponsor approval received on or before ~~March 31~~ April 30 which is not completed within 10 days of notice of the deficiency, as well as any renewal application received after ~~March 31~~ April 30, shall not be accepted and the sponsor will have to file an application for original approval on or after July 1 in order to be reapproved. Applicants for renewal of approval must satisfy the criteria for original approval in order to renew their approval. When the Commission issues original course or sponsor approval with an effective date of approval between April 1 and June 10, the deadline for submission of applications for renewal of such newly approved sponsor or course shall be June 10 of the year in which the original approval is issued.

(b) The fee for renewal of Commission approval shall be fifty dollars (\$50.00) for each update course sponsor and for each elective course, provided that no fee is required for course sponsors that are exempted from original application fees. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable.

Statutory Authority G.S. 93A-3(c); 93A-4A.

SECTION .0500 - COURSE OPERATIONAL REQUIREMENTS

.0503 MINIMUM CLASS SIZE

The minimum class size for any session of an approved continuing education course shall be five ~~students~~ students, as determined by the sponsor's preregistration records. The minimum class size requirement shall not apply to class sessions when the sponsor notifies the Commission in writing of the scheduled class session as provided in Rule .0504 of this Section and advertises in advance the sched-

uled class session in the general real estate community where the class session is to be held. A sponsor who conducts a class session for fewer than five students shall submit with the reports verifying completion of the course a copy of the advertisement for the class session plus a statement or other documentation indicating the date of the advertisement and the advertising method.

Statutory Authority G.S. 93A-3(c); 93A-4A.

.0511 STUDENT PARTICIPATION STANDARDS

(a) In addition to requiring student compliance with the attendance requirement, sponsors and instructors shall require that students comply with the following student participation standards:

- (1) A student shall direct his active attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class.
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to properly report completion of a course by the student.

(b) ~~Instructors and sponsors have the authority to dismiss from a class session any student who, after having received one warning, who fails to comply with the student participation standards prescribed in Paragraph (a) of this Rule. In the alternative, the instructor or sponsor may report the problem to the Commission when providing required reports to the Commission regarding the class session during which the problem occurred.~~

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall sponsors include the name of such student on their reports verifying completion of a continuing education course. Sponsors shall submit to the Commission with their reports for the class session a written statement which includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

Statutory Authority G.S. 93A-3(c); 93A-4A.

CHAPTER 65 - THERAPEUTIC RECREATION CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the State of NC Therapeutic Recreation

Certification Board intends to amend rules cited as 21 NCAC 65 .0004, .0006 and .0007.

Proposed Effective Date: February 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person may demand a public hearing by contacting the Board within 15 days of the publication of this Notice. The demand shall be directed to: Becky Garrett, PO Box 67, Saxapahaw, NC 27340.

Reason for Proposed Action:

21 NCAC 65 .0004 - to delete Paragraph (b), it states the same as Paragraph (a).

21 NCAC 65 .0006 - to add in Paragraph (b) that communications fee shall be collected upon certification. New Paragraph (d) to add a fee of fifteen dollars (\$15.00) for returned checks. New Paragraph (e) to add a fee of forty-five dollars (\$45.00) for an appeal.

21 NCAC 65 .0007 - delete example in Paragraph (d).

Comment Procedures: Any interested person may direct comments to the Board by mail addressed to: Becky Garrett, PO Box 67, Saxapahaw, NC 27340. All comments must be postmarked no later than December 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

.0004 ACADEMIC - TRS EXAMINATION

(a) TRCB shall provide to all applicants for certification as a Therapeutic Recreation Specialist, (TRS), a written examination administered by The National Council for Therapeutic Recreation Certification (NCTRC) to evaluate the qualifications of applicants for certification. The examination shall be given in a central geographic area within the state at least once a year.

~~(b) A national examination for Therapeutic Recreation Specialists administered by National Council for Therapeutic Recreation Certification (NCTRC) will be used to evaluate the qualifications of applicants for certification. (The examination shall be given in a central geographic area within the state.)~~

(1) Qualifications: In order to qualify to take the examination candidates must meet the following requirements:

(a) ~~(A)~~ Candidates must present evidence (Official Transcripts) of a baccalaureate degree or higher from an accredited college or university with a major in therapeutic recreation or a major in recreation and an option/emphasis in therapeutic recreation.

(b) ~~(B)~~ Coursework for an Option/Emphasis in Therapeutic Recreation must reflect a minimum of three courses (9 semester/13.5 quarterhours) that the title, course description and course

- outline reflect recreation content.
- (c) ~~(C)~~ Coursework for an Option/Emphasis in Therapeutic Recreation must reflect a minimum of three courses (9 semester/13.5 quarterhours) that the title, course description and course outline reflect therapeutic recreation content.
- (d) ~~(D)~~ To improve consistency of the TRCB certification plan, the equation from semester to quarter hours will be by the ratio of one semester to 1.5 quarter hours.
- (2) Eligibility and passing requirements, reporting of scores, retaking the exam, cancellations and review of the exam by unsuccessful applicants will be conducted according to the policies established by National Council for Therapeutic Recreation Certification (NCTRC) which are hereby incorporated by reference including substitutions, amendments and additions. Copies can be obtained at no cost from National Council for Therapeutic Recreation Certification (NCTRC), P.O. Box 479, Thiels, NY 10984-0479, Phone: (914) 947-4346.

.0006 CERTIFICATION FEES

- (a) An additional fee shall be charged by the National Council for Therapeutic Recreation Certification (NCTRC) based on the cost of administration of the examination; the fee will be payable to National Council for Therapeutic Recreation Certification (NCTRC).
- (b) A biannual TRCB Communications fee of fifteen dollars (\$15.00) shall be charged by TRCB to cover expenses for an annual report, newsletters, and directory to be sent to all those certified. The fee will be collected upon certification and in the year that certification renewal is due thereafter.
- (c) A fee of thirty five dollars (\$35.00) for a directory and fifty dollars (\$50.00) for mailing labels of those certified will be charged for those requesting them for educational purposes upon approval of TRCB.
- (d) A fee of fifteen dollars (\$15.00) shall be charged by TRCB for returned checks.
- (e) A fee of forty-five dollars (\$45.00) shall be charged for an appeal.

Statutory Authority G.S. 90C-10.

Statutory Authority G.S. 90C-6; 150B-21.6.

.0007 CERTIFICATE RENEWALS

(a) Continuing Professional Education/Experience Requirements: During the two year certification period, Continuing Education and Continuing Professional Experience will be required for certification renewal. Candidates for Certification Renewal as a TRS have a choice from two of three options to earn a minimum of 40 points to renew their certification. Candidates for Certification as a TRA must accrue their points from Professional Experience and Continuing Education options. The options, their definitions and their point values are listed in this Paragraph.

Option #1: Professional Experience (20 points)

Option #2: Continuing Education (20 points)

Option #3: Examination (TRS Only) (40 points)

| Component | Description | TRS Point Value | TRA Point Value |
|-------------------------|--|----------------------------|----------------------------|
| Professional Experience | a minimum of 144 hours (72 hours per year) | 20 points (10 per year) | 20 points (10 per year) |
| Continuing Education | 2 CEU's (1 CEU's, 10 contact hours annually) | 20 points (10 per year) | 20 points (10 per year) |
| Examination (TRS Only) | passing score on TRS certification exam | 40 points | Not Applicable |

(b) Professional Experience Component: If this component is selected to complete for renewal requirements, a minimum of 144 hours of therapeutic recreation experience must be earned within the two year certification period. The hours can be accumulated through the performance of the following professional roles:

- (1) Direct service deliverer - delivers service directly to clients or groups of clients as a therapeutic recreation specialist or a therapeutic recreation assistant by performing assessments, developing individual programs and treatment plans, documenting the assessments and interventions, working on an interdisciplinary team or performing outreach activities.
- (2) Supervisor - supervises therapeutic recreation personnel in the direct delivery of service to clients.
- (3) Administrator - administers a department or a division which includes therapeutic recreation.
- (4) Educator - teaches courses in therapeutic recreation.

- (5) Consultant - performs consulting services in therapeutic recreation for organizations, educational institutions, agencies or corporations.
- (6) Volunteer - volunteers services performed in any of the various roles described in Subparagraphs (b)(1) through (b)(5) of this Rule.
- (7) Professional Service/Paid or Volunteer - includes service on professional boards, councils, legislative work, standards development, or curriculum development, as this service relates to therapeutic recreation.
- (8) Student - participates in internships or supervised in-service education and training.

(c) Continuing Education Component: The continuing education component includes a wide range of continuing education activities that are typically available to Therapeutic Recreation Specialists and Therapeutic Recreation Assistants. Continuing Education Points (CEP's) are measured according to the equivalency of an educational contact hour (50 minutes of actual classroom/instructional time, excluding registration time and breaks).

- (1) Continuing Education Units (CEU's) shall also be recognized and shall be translated into CEP's as follows:

- (A) 1 CEP = 1 contact hour = 0.1 CEU
- (B) 10 CEP's = 10 contact hours = 1.0 CEU

- (2) CEP's shall be accumulated in one or several of three categories:

- (A) continuing education courses and experiences, or
- (B) academic courses, or
- (C) professional publications and presentations.

Each of these three is explained in this Rule.

- (3) Continuing Education Courses and Experiences such as symposia, seminars, are accepted if they are approved by a professional therapeutic recreation organization at the local, state, or national level, that uses the National or International Council on Continuing Education Standards or through a therapeutic recreation-related group (such as a hospital or other agency) or through a college/university that uses national continuing education standards. The content of the continuing education experiences must be linked directly to the knowledge areas of therapeutic recreation specialist from the National Job Analysis Study conducted by National Council For Therapeutic Recreation Certification (NCTRC). The major categories of therapeutic recreation knowledge areas are:

- (A) Background Information,
- (B) Diagnostic Groupings and Populations served,
- (C) Assessment,
- (D) Planning the Program,
- (E) Implementing the Program/Treatment,
- (F) Documentation and Evaluation,
- (G) Organizing and Managing Services,
- (H) Advancement of the Profession.

Only study via self-study courses that are credited by an acceptable continuing education granting agency as described in this Paragraph shall be accepted.

- (4) Academic Courses.

- (A) Credit equivalents for completing academic coursework are:

- (i) 1 semester = 15 Contact hours = 15 CEP's,
- (ii) 1 trimester = 14 Contact hours = 14 CEP's,
- (iii) 1 quarter = 10 Contact hours = 10 CEP's.

- (B) Credit equivalents for audited academic coursework are:

- (i) 1 semester = 8 Contact hours = 8 CEP's,
- (ii) 1 trimester = 7 Contact hours = 7 CEP's,
- (iii) 1 quarter = 5 Contact hours = 5 CEP's.

The content of academic courses shall also be linked to the knowledge areas of the National Job Analysis Study conducted by NCTRC.

- (5) Professional Publications and Presentations. No more than 10 CEP's in the area of professional publications and presentations will be accepted for each renewal period (2 years) according to the following point value:

| | | |
|-------------------------------|----|-------|
| Editorials | 2 | CEP's |
| Articles on original research | 6 | CEP's |
| Newsletter article | .8 | CEP's |
| Editing a textbook | 6 | CEP's |
| Authoring a textbook chapter | 6 | CEP's |
| Journal Articles | 4 | CEP's |

| | | |
|--|----|----------------------------------|
| Journal reviews or book review | 2 | CEP's |
| Research abstract | .8 | CEP's |
| Textbook | 8 | CEP's |
| Unpublished masters or doctoral thesis | 4 | CEP's |
| Presentations at professional meetings | .8 | CEP's per 50 minutes of lecture. |

Credit will not be given for repeat or multiple presentations of the same seminar, in-service, conference, original papers or poster presentation.

(d) Examination: If the examination component is chosen for recertification, Therapeutic Recreation Specialists will be required to take the current examination for professional level certification. The examination must be taken and passed within the two years of current certification. ~~For example, a TRS certified in November of 1994 can take the exam as early as November of 1995 but no later than November of 1996 to count this component toward renewal requirements.~~

Statutory Authority G.S. 90C-6; 90C-9c(4); 90C-11.

CHAPTER 66 - VETERINARY MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Veterinary Medical Board intends to amend rules cited as 21 NCAC 66 .0101, .0105, .0106, .0108, .0201 - .0203, .0205 - .0208, .0301, .0303 - .0308, .0601, .0606, .0703; and adopt rules cited as 21 NCAC 66 .0209, .0210, .0310 - .0311.

Proposed Effective Date: April 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on January 9, 1996 at the NC Veterinary Medical Board, 1307 Glenwood Avenue, Suite 156, The Methodist Building, Raleigh, NC 27605.

Reason for Proposed Action: *The proposed new rules and the amendments to existing rules have been promulgated by the Board to update and clarify Board policies and procedures, and primarily to conform to and implement the 1993 General Assembly amendments to Article 11, G.S. 90, the Veterinary Practice Act, under which statute the Board regulates the practice of veterinary medicine in this State.*

Comment Procedures: *Any person interested in these Rules may present written comment to the Board office no later than 9:30 a.m. on January 9, 1996. The mailing address of the Board is NC Veterinary Medical Board, P.O. Box 12587, Raleigh, NC 27605. Persons planning to present oral comments relative to the proposed-rulemaking should notify the Board office in writing by 5:00 p.m. January 4, 1996. Persons wishing to make oral comments should specify in writing which proposals they are speaking to and whether they intend to speak in favor of or against the proposal. Speakers may be limited to a total of 10 minutes, subject to the discretion of the hearing officer of the Board.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

.0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Veterinary Practice Act," Article 11, Chapter 90, of the General Statutes of North Carolina, establishes and authorizes the "North Carolina Veterinary Medical Board," hereafter referred to as the "Board." Unless otherwise directed, all communications should be addressed to the Board at Office of the Executive ~~Secretary~~ Director, P.O. Box 12587, 1307 Glenwood Avenue, Raleigh, North Carolina 27605.

Statutory Authority G.S. 90-185(6); 90-182.

.0105 APPLICABILITY OF BOARD RULES

The Executive ~~Secretary~~ Director shall mail a copy of Article 11 of Chapter 90 of the North Carolina General Statutes and the rules of the Board adopted under Chapter 90 to all applicants applying for licensure. Additional copies are available from the Executive ~~Secretary~~ Director at the Board office. Rules adopted and published by the Board under the provisions of Article 11 of Chapter 90 and G.S. 150B shall be binding upon every individual holding a license from the Board, and upon all professional corporations and entities legally authorized to offer or to perform veterinary services in this state. All licensees of the Board are charged with having knowledge of the existence of the Board rules and shall be deemed to be familiar with their several provisions and to understand them.

Statutory Authority G.S. 90-185(6).

.0106 CURRENT INFORMATION REQUIRED BY THE BOARD

Each licensee has a continuing responsibility of keeping the Board currently advised as to his or her proper and current mailing address. All changes of professional association, or dissolution of a professional relationship, must be reported within 60 days to the Executive ~~Secretary~~ Director together with the new status and addresses of the

individuals or firm.

Statutory Authority G.S. 90-185(6).

.0108 FEES

Fees required for ~~individual and corporate~~ applications, ~~registrations, examinations, renewals, renewal of license or registration, reinstatements and late penalties with respect to~~ veterinary licenses, limited licenses, faculty certificates, zoo veterinary certificates, and veterinary technician registrations; veterinary practice facility inspections; applications for temporary permits; application for registration as veterinary intern or preceptee; and copies of the roster, materials and other publications or services of the Board are payable in advance to the Executive ~~Secretary~~ Director of the Board. The fees currently established and published by the Board are:

- (1) Veterinary License
 - (a) Issuance or Renewal \$150.00
 - (b) National Board Examination (fee shall be in an amount directly related to the costs to the Board.)
 - (c) Clinical Competency Test (fee shall be in an amount directly related to the costs to the Board.)
 - (d) North Carolina License Examination \$250.00
 - (e) Late Renewal Fee \$50.00
 - (f) Reinstatement \$100.00
- (2) Veterinary Technician Registration
 - (a) Issuance or Renewal \$50.00
 - (b) National Board Examination for Veterinary Technicians (fee shall be in amount directly related to the costs to the Board.)
 - (c) North Carolina Veterinary Technician Examination \$50.00
 - (d) Late Renewal Fee \$50.00
 - (e) Reinstatement \$100.00
- (3) Professional Corporation Certificate of Registration
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (4) Limited Veterinary License
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (5) Veterinary Faculty Certificate
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (6) Zoo Veterinary Certificate
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (7) Temporary Permit: Issuance \$150.00
- (8) Veterinary Student Intern Registration: Issuance: \$25.00

- (9) Veterinary Student Preceptee Registration: Issuance: \$25.00
- (10) Limited Liability Partnership Registration
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (11) Limited Liability Company Registration
 - (a) Issuance or Renewal \$150.00
 - (b) Late Renewal Fee \$50.00
 - (c) Reinstatement \$100.00
- (12) Veterinary Practice Facility Inspection \$75.00
- (13) Copies of Board publications, rosters, or other materials available for distribution from the Board (fees shall be in amounts determined by the Board reasonably related to the costs of providing the copies.)
- (1) Application for Individual License:
 - (a) National Board Examination \$300.00
 - (b) Clinical Competency Test \$200.00
 - (c) North Carolina Exam \$200.00
- (2) Application for Corporate Certificate of Registration \$50.00
- (3) Application for Special Registration of Veterinary Intern or Preceptee \$5.00
- (4) Application for Renewal of Individual License \$50.00
- (5) Application for Renewal of Corporate Certificate of Registration \$25.00
- (6) Application for Renewal of Registration for Veterinary Technician \$5.00
- (7) Late Renewal Penalty for Veterinary Technician \$5.00
- (8) Late Renewal Penalty for Individual License \$10.00
- (9) Late Renewal Penalty for Corporate Certificate of Registration \$10.00

Statutory Authority G.S. 55B-11; 90-185(6); 90-186(6); 90-187(b); 90-187.5; 90-187.6; 132-6.

**SECTION .0200 - PRACTICE OF
VETERINARY MEDICINE**

.0201 FORMS OF PRACTICE

(a) The phrase "veterinary practice" or "veterinary medical practice" shall be deemed to be the delivery of veterinary medical services by a licensed veterinarian through a sole proprietorship or a legal entity authorized by law to engage in the delivery of veterinary medical services.
 (a) (b) Veterinary practice may be by sole practitioners, proprietors, partnerships, or duly registered professional corporations, limited liability companies, or limited liability partnerships. Only licensees or holders of temporary permits under the supervision of licensed veterinarians may form a partnership or other entities described herein authorized for the practice of veterinary medicine. Partnerships of registered corporations are not permitted.

(b) (c) No professional corporation may practice or offer to practice veterinary medicine unless it complies with G.S. 55B-10. No professional corporation may do any act which individual licensees are prohibited from doing, and every professional corporation practicing veterinary medicine shall be subject to the disciplinary powers of the Board as prescribed in G.S. 90-187.8 and Rules .0205, .0206, .0207 and .0208 of this Section as well as all other rules of the Board pertaining to individual or partnership practice.

(e) (d) The services of any veterinary medical professional corporation or limited liability company shall be limited to veterinary services as defined in G.S. 90-181(6) and "such services as may be ancillary thereto" as determined by the Board.

Statutory Authority G.S. 55B-10; 55B-12; 90-185(6); 90-187.11; 90-187.12.

.0202 NAME OF PRACTICE

(a) The adoption or use of individual, firm or corporate names other than the proper names of licensees a name for the entity authorized by law through which the licensed veterinarian practices and delivers veterinary services must have prior Board approval in order to avoid duplication or confusion of names and to prevent use of names which might be misleading. No proper names of persons other than licensees may be included in the name. If the veterinary medical practice uses the name or names of the veterinarians owning or operating the facility in the name of the practice, the name shall conform to the requirements of G.S. 90-181.1(c), and Board approval shall be obtained prior to the use of that name. The use of the word "facility" is not required in the name of those facilities offering the services described in G.S. 90-181.1(b)(2) and (b)(3) unless required by the context for clarification.

(b) A facility where the practice of veterinary medicine is conducted shall use in its name one of the descriptive terms as set forth in G.S. 90-181.1(b) in a manner so as to accurately inform the public of the levels of service offered at the facility.

Statutory Authority G.S. 55B-5; 90-181.1; 90-185(6).

.0203 LICENSE REQUIRED TO PRACTICE; FACULTY CERTIFICATE; ZOO VETERINARY CERTIFICATE

(a) No person shall engage in the practice of veterinary medicine in this state or attempt to do so without first having applied for and obtained a license from the Board.

(b) Upon ~~request~~, written application, the Board may issue a veterinary faculty certificate to ~~an~~ a ~~instructor~~ faculty member in the College of Veterinary Medicine at North Carolina State University which certifies that the holder thereof is exempt from the requirements of licensing under G.S. 90-187.10(3). To be an ~~instructor~~ faculty member in the College of Veterinary Medicine, the ~~instructor~~ faculty member must be a graduate of a "recognized school of

veterinary medicine" as defined by the American Veterinary Medical Association and a member of the faculty or staff of the College of Veterinary Medicine. The ~~instructor's~~ faculty member's certificate shall indicate that the holder is exempt from the requirements for licensing provided that the practice of veterinary medicine is confined to the ~~instructor's~~ faculty member's ~~teaching~~ duties in the hospital or field service unit of the College of Veterinary Medicine. Such exemption certificate shall automatically expire when the holder's relationship is terminated with the school and university.

(c) Upon written application, the Board may issue a zoo veterinary certificate in lieu of the license that otherwise would be required by G.S. 90-187.10 to a veterinarian not licensed by the Board who is employed by the North Carolina State Zoo. The requirements for and criteria governing the Zoo Veterinary certificate shall be the same as for the faculty certificate, to the extent applicable and practical. The application shall set forth, in addition, the applicant's Zoo employment history, the applicant's job description and duties with the N.C. State Zoo, and the reasons the applicant seeks exemption from the licensure requirements for veterinarians.

(d) The request for either the faculty certificate or zoo veterinary certificate shall be in writing upon application form furnished by the Board. All fees for issuance, renewal, re-instatement, as well as criteria for continuing education and discipline shall be as set forth in Article 11, G.S. 90 and the rules of the Board. The zoo veterinary certificates shall be annually renewed each calendar year, and the faculty certificates also shall be for the duration of one year, but the Board may determine a beginning date other than January 1 if necessary to conform to academic appointments or the academic calendar of the College of Veterinary Medicine.

(e) The Board may consider a written application for a faculty certificate by a person who is a graduate of a "recognized school of veterinary medicine" as defined in Paragraph (b) of this Rule and who is a member of the faculty or staff of a college or university in this State other than the College of Veterinary Medicine of North Carolina State University, provided that the application sets forth the qualifications of the faculty member; the reasons that the faculty member seeks to be exempt from the requirements for licensing as a veterinarian in North Carolina, and the duties of the faculty member at the college or university where he or she is employed. If a faculty certificate is issued under this Paragraph, all other application requirements, fee requirements, and expiration conditions apply it as to those issued to faculty members at the College of Veterinary Medicine at North Carolina State University.

Statutory Authority G.S. 90-185(6); 90-187.10; 90-187.14.

.0205 DISCIPLINE OF LICENSEES; PERMITTEES; REGISTRANTS; MANDATORY STANDARDS OF CONDUCT

Upon information or complaint, the Board shall revoke or suspend the license of, or otherwise discipline, ~~any licensed veterinarian~~ a person licensed under Article 11, G.S. 90, or may deny a license required by said Article, under the provisions of Chapters 90 or 150B of the General Statutes of North Carolina said Article or G.S. 150B or the Board rules. As used in this Section, the word "license" includes a license to practice veterinary medicine, a limited veterinary license, a temporary permit, a veterinary faculty certificate, a zoo veterinary certificate, and a registration of a veterinary technician, a veterinary student intern, and a veterinary student preceptee. Grounds for disciplinary action shall include those as stated in G.S. 90-187.8, in addition to (but not limited to), the following:

- (1) to make untrue and deceitful statements in any application or representation to the Board, or in any professional relationship, or in a veterinarian-client-patient relationship as that relationship is defined in G.S. 90-181(7a);
- (2) to act in such a manner as to enable others to evade the animal and public health requirements related to the practice of veterinary medicine, as administered by the North Carolina or U.S. Departments of Agriculture or the North Carolina Department of Human Resources, or to the provisions of the North Carolina Veterinary Practice Act;
- (3) to make, promise to make or accept contributions of money, goods or services for purposes of bribing any person with whom the ~~person licensed veterinarian~~ person licensed veterinarian has a professional association, or has a veterinarian-client-patient relationship as defined in G.S. 90-181(7a), or to whom the veterinarian person holding a license renders or offers to render professional services to the extent allowed under the license;
- (4) to defraud or willfully mislead the Board or any person with whom he or she has a professional association, or has a veterinarian-client-patient relationship as defined in G.S. 90-181(7a), or to whom the veterinarian person holding the license renders or offers to render professional services to the extent allowed under the license; and
- (5) to ~~intentionally~~ intentionally violate the laws of North Carolina or any other state related to the practice of veterinary medicine or the delivery of services as allowed by the license issued by the Board, or to intentionally violate any veterinary licensing Board rule in this or another ~~state; state; and~~
- (6) to communicate verbally or in writing words or information against the reputation, integrity or professional competence of a veterinarian, permittee or registrant, which words or information are false, or done in reckless disregard of the truth or falsity of the words or information.

187.8.

.0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION

Each ~~licensee of the Board~~ person holding a veterinary license, a faculty certificate, a Zoo veterinary certificate or a veterinary technician registration issued by the Board shall satisfactorily complete "minimum standards for continuing veterinary medical education," which standards shall be a condition precedent to the renewal of a license certificate or registration, respectively. Except as otherwise qualified, the criteria with respect to continuing veterinary medical education of a person holding a certificate of registration as a veterinary technician shall be the same as that for a licensed veterinarian. The minimum standards are as follows:

- (1) Veterinarians are required to earn ~~15~~ 20 credit hours each calendar year before becoming eligible for license renewal.
- (2) Veterinary technicians registered with the Board are required to earn 12 credit hours every two calendar years before becoming eligible for registration renewal.
- (3) Veterinarians unable to earn credits because of sickness or other justifiable reasons may, at the discretion of the Board, be exempted from all or part of the credit requirements.
- (4) Credit hours may be earned as follows: one hour credit for each hour of attendance at in-depth seminars such as seminars sponsored by the American Veterinary Medical Association (AVMA), the American Association of Animal Hospitals (AAHA), the North Carolina Veterinary Medical Association (NCVMA), and academies and schools of veterinary medicine. Only one hour credit may be acquired for attendance at a local sectional association meeting. The Board will consider additional course offerings for approval for continuing education credit upon a case by case basis, subject to the Board's being furnished sufficient information regarding course content for a decision to be made as to the adequacy of the course for continuing education credit. Unless otherwise allowed by the Board, approval for continuing education credit for courses other than those specified herein shall be obtained prior to the veterinarian's attendance at the course. Only one hour three hours credit per year may be acquired from review of an audio or video cassette or computer-based training. The audio or video cassette or computer-based training must be approved by the Board, and the veterinarian will be required to furnish a copy, or substantially the equivalent of it, and sufficient documentation for the Board to make an appropriate evaluation for approval.
- (5) Each veterinarian must keep a record of credit

Statutory Authority: G.S. 90-181(7a); G.S. 90-185(6); 90-

(4)

hours earned. Each year he or she will be required to certify as to the number of credit hours earned on a form to be provided by the Board. The form will be mailed to each veterinarian at the time of annual renewal.

- (5) (6) During the calendar year in which a veterinarian graduates from veterinary college or during the calendar year in which a veterinary technician graduates from veterinary technician school, a veterinarian or veterinary technician, respectively, shall not be required to earn continuing education credits for one year from the date of initial examination but, in lieu thereof, shall attend and successfully complete the requirements of a Board-sponsored interview and seminar for that portion of the calendar year remaining from the date when the license or registration was issued and the end of the calendar year.

Statutory Authority G.S. 90-185(6); 90-186(1).

.0207 MINIMUM FACILITY AND PRACTICE STANDARDS

(a) All locations where veterinary medicine is practiced shall be adequate for the maintenance of good hygiene at all times. All areas of the premises shall be maintained in a clean, odor free, and orderly condition at all times.

(b) The minimum standards for all facilities where veterinary medicine is practiced shall be:

- (1) Adequate heating and cooling shall be provided for the comfort of the animals and the facility shall have sufficient ventilation in all areas.
- (2) Proper lighting shall be provided in all rooms utilized for the practice of veterinary medicine.
- (3) Hot and cold running water shall be provided along with adequate toilets and lavatories for the personnel and for the clients.
- (4) All premises shall have sanitary storage which is adequate for the size of the facility.
- (5) The facility shall have interior and exterior receptacles for waste disposal which shall comply with state, county and municipal health laws, ordinances and regulations.
- (6) The facilities shall employ a procedure for the prompt, sanitary and aesthetic disposal of dead animals which complies with all state, county and municipal laws, ordinances and regulations. Dead animals, held on premises for longer than 24 hours, shall be placed in a refrigerator-refrigerated.
- (7) All interior spaces in the facility must be clean and orderly.
- (8) The facilities' examination rooms shall have the following:
 - (A) lined waste receptacles or chutes;
 - (B) a sink with disposable towels either in the examination room, or adjacent or reasonably

convenient to the examination room, so as to facilitate necessary and required use of the sink for maintaining sanitation and hygiene in connection with examinations; and

- (C) a table with an impervious surface which shall be sanitized between patients.
- (9) Surgery shall be performed in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support and monitoring procedures as well as recovery care. The standards for current veterinary practice are made available to the licensee through the courses provided for mandatory continuing education. At all times, the minimum standards for surgery shall be:
 - (A) Surgery shall be performed in a room designated and reserved for surgery.
 - (B) The surgery room shall be clean, orderly and well lighted.
 - (C) Sterilization must include a steam pressure sterilizer or autoclave equipment. Cold sterilization may be used for field or septic conditions.
 - (D) Instruments and equipment utilized in the surgery room shall be commensurate with the type of surgical service being provided.
 - (E) Storage in the surgery room shall be limited to only items and equipment normally related to surgery and surgical procedures.
 - (F) Emergency drugs must be readily available to the surgery area.
 - (G) The operating table shall be constructed of a smooth and impervious material.
 - (H) There shall be a separate surgical preparation area.
 - (I) There shall be available for surgery sterilized instruments, gowns, towels, drapes, gloves, caps and masks.
 - (J) Regulated ~~Oxygen~~ oxygen under positive pressure shall be available.
- (10) The facilities shall have the capability for use of either in-house or consultant laboratory service for blood chemistry, cultures and antibiotic sensitivity examinations, complete blood counts, histopathological examinations and complete necropsies. An in-house laboratory facility shall meet the following minimum standards:
 - (A) The laboratory room shall have ample storage space;
 - (B) Ample refrigeration shall be provided;
 - (C) All facilities must have, as a minimum, in-house capability for the following tests:
 - (i) urine tests,
 - (ii) micro-hematocrit determination,
 - (iii) flotation tests for ova of internal parasites,
 - (iv) skin scrapings for external parasite diagnosis, and

- (v) exams for circulating blood microfilaria or heartworm antigen assays.
- (11) The minimum standards for drug procedures shall be:
 - (A) All controlled substances shall be stored, maintained, administered, dispensed and prescribed in compliance with federal and state laws.
 - (B) Except for labeled manufactured drugs with proper instructions, all drugs dispensed shall be labeled with:
 - (i) name, address and telephone number of the facility,
 - (ii) name of client,
 - (iii) animal identification,
 - (iv) date dispensed,
 - (v) directions for use,
 - (vi) name and strength of the drug, and
 - (vii) name of prescribing veterinarian.
 - (C) A record of all drugs administered or dispensed shall be kept in the records of the individual animal, if the animal is a companion animal, or in the client's record, if the animal is an economic animal.
- (12) The following minimum standards shall apply to record keeping:
 - (A) Every veterinarian shall keep ~~a written report~~ written reports or reports stored via computer/word processing and easily retrievable of the animals treated. This record shall include but not be limited to pertinent medical data such as dates and type of vaccinations and all relevant medical and surgical procedures on a daily basis, radiographs and laboratory data.
 - (B) Records shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary facility.
 - (C) Records shall be maintained by individual animal for companion pet animals examined or treated ~~in the facility~~.
 - (D) The recordkeeping requirement shall not apply to the treatment of economic animals except as provided in Paragraph (11)(C) of this Rule.
- (13) The following minimum standards shall apply to radiography:
 - (A) capability and proof of use of either in-house or consultant services for obtaining diagnostic quality radiographs;
 - (B) radiology equipment and use shall be in accordance with all federal and state laws;
 - (C) all personnel using radiology equipment must wear radiation badges.
- (14) Cages, exercise areas, pens and stalls are to be kept in a clean and orderly condition, in a well-lighted area, and in good repair to prevent injury to animals and to promote physical comfort.
- (15) All new veterinary facilities and all existing facilities changing ownership shall be inspected and approved by the Board prior to the practice of veterinary medicine within the facility.
- (16) The Board shall make periodic inspections of veterinary premises. Such inspection shall include, but not be limited to, verification of compliance with this Rule. The Board shall make reinspections as necessary to ensure compliance with this Rule.
- (17) Violation of the standards for ~~full service all~~ veterinary hospitals and clinics facilities covered by set in this Rule shall be grounds for disciplinary action as provided in G.S. 90-186 and 90-187.8.
- (18) Violation of federal, state or a municipal laws or regulations regarding disposal of medical wastes.
- (19) The following minimum standards shall apply to after hours emergency services. The veterinarian who is the owner, as well as the veterinarian who is in charge of the facility, shall provide this after hours emergency service by one or more of the methods listed below in Parts (b)(19)(A) through (C) of this Rule. If after hours emergency veterinary services shall be provided other than by the veterinarian who is the owner or who is the veterinarian in charge of the facility, the name, address and telephone numbers of the provider of the after hours emergency services shall be posted prominently at the facility in areas where this information is likely to be seen by persons coming to the entrances of the facility.
 - (A) Availability by telephone, pager or answering machine; or
 - (B) Membership in an after hours emergency services facility or organization that agrees with the veterinarian to assume the responsibility for this care; or
 - (C) A written agreement with another facility or veterinary emergency clinic located near or reasonably accessible to the facility and which provides emergency veterinary services.
- (20) All facilities where veterinary medicine is practiced other than facilities providing limited veterinary services shall maintain the minimum standards as required by this Rule, unless specifically exempted by statute or Board rule in facilities providing limited veterinary services.

Statutory Authority G.S. 90-185(6); 90-186(2).

.0208 FACILITIES PROVIDING LIMITED VETERINARY SERVICES

- (a) If complete veterinary medical services are not offered in a mobile or satellite veterinary clinic, an emergency

veterinary hospital, or a house-call practice the public shall be so informed of the services which are not available by way of a posted notice, in plain view. The notice shall list all hospital facilities in the area which offer the services not available in the facility. With respect to a mobile practice, including but not limited to a house-call or farm-call practice, members of the public who are or may become clients of the veterinary practice shall be informed in writing of the services which are not available at the mobile practice in a manner reasonably calculated to clearly communicate this information, at the first opportunity of inquiry or contact concerning delivery of veterinary services.

(b) The minimum standards set in Rule .0207 for all veterinary premises apply equally to a facility covered by this Rule, except the standards that apply to services that are not available in the facility and of which the public is notified in the posted notice.

(c) If emergency services are not available in the facility on a 24 hour basis, the veterinarians in charge of the facility must have a written agreement with a local clinic or hospital for the provision of emergency services. The name and address of the local clinic or hospital offering emergency services under the agreement shall be posted. The facility must also comply with the minimum standards set forth in Rule .0207(b)(19) of this Section regarding communicating information about after hours emergency medical service through a recorded, telephone answering service or pager accessible to persons calling the published telephone number of the facility.

(d) If either hospitalization or radiology services are not available in the facility, the veterinarians in charge of the facility must have a written agreement with a local clinic or hospital for the provision of these services. The name and address of the local clinic or hospital offering hospitalization or radiology services under the agreement shall be posted.

(e) No animal technician, veterinary student intern, employee or other assistant shall operate any facility covered by this Rule without the direct supervision of a licensed veterinarian on the premises.

(f) If for any reason the veterinarian who is the owner, as well as the veterinarian who is in charge of the facility, does not obtain a written agreement or agreements as required by this Rule, the veterinarian shall be responsible for providing any or all of the services that would have been covered by the agreement or agreements.

(g) (f) Violation of this Rule shall be grounds for disciplinary action as provided in G.S. 90-186 and 90-187.8.

Statutory Authority G.S. 90-185(6); 90-186(2); 90-186(3).

.0209 LIMITED LIABILITY COMPANIES

(a) Veterinary medical services may be provided through a limited liability company that complies with this Rule, Article 11, G.S. 90, the rules of the Board, and statutes governing limited liability companies, including G.S. 57C-2-01.

(b) The name of a limited liability company organized to

practice veterinary medicine shall not include any adjectives or other words not in accordance with Article 11, G.S. 90 and the rules of the Board.

(c) The corporate name of a professional limited liability company registered under these Rules shall contain the wording "professional limited liability company," "professional ltd. liability co.," "professional limited liability co.," or "professional ltd. liability company," or an abbreviation of one of the foregoing: "P.L.L.C." or "PLLC."

(d) Domestic professional limited liability companies must be formed and all limited liability companies must be operated in accordance with the requirements set out in G.S. 57C.

(e) Before filing the articles of organization for a professional limited liability company with the Secretary of State, the organizing members shall submit the following to the Board:

(1) A registration fee as set by Rule .0108 of this Chapter; and

(2) A certificate certified by all organizing members, setting forth the names and addresses of each person who will be employed by the professional limited liability company to practice veterinary medicine, and stating that all such persons are duly licensed to practice veterinary medicine in North Carolina, and representing that the company will be conducted in compliance with the North Carolina Limited Liability Company Act (G.S. 57C), this Chapter, Article 11, G.S. 90 and the rules of the Board.

(f) A certification that each of the organizing members is licensed to practice veterinary medicine in North Carolina shall be returned to the professional limited liability company for filing with the Secretary of State.

(g) A Certificate of Registration for a professional limited liability company shall be renewed annually. The Certificate of Registration shall expire on the last day of December following its issuance by the Board and shall become invalid on that date unless renewed. Upon written application signed by its manager on a renewal form prescribed by the Board accompanied by the prescribed fee as set by Rule .0108 of this Chapter, the Board shall renew the Certificate of Registration providing that the professional limited liability company has complied with Article 11, G.S. 90, the rules of the Board and applicable General Statutes of North Carolina.

(h) The Board may request in writing such supplemental reports as it deems appropriate from any professional limited liability companies registered with the Board pursuant to G.S. 57C, Article 11, G.S. 90, and these Rules. The professional limited liability company shall file such reports with the Board's office within 30 days from the date it receives the request.

(i) Professional limited liability companies registered with the Board pursuant to G.S. 57C shall file a certified copy of all amendments to the articles of organization within 30 days after the effective date of each amendment. They shall also

file a copy of any amendment to the bylaws, certified to be a true copy by the manager(s) of the professional limited liability company within 30 days after adoption of the amendment.

(j) The Board shall issue a certificate authorizing transfer of membership when membership is transferred in the professional limited liability company. This transfer form shall be permanently retained by the company. The membership books of the company shall be kept at the principal office of the company and shall be subject to inspection by authorized agents of the Board. Transfer of membership may only be to a person licensed to practice veterinary medicine in this State.

(k) All documents required by these Rules to be submitted to the Board by the professional limited liability company shall be executed by the manager(s) of the professional limited liability company, and duly acknowledged before a notary public or some other officer qualified to administer oaths.

Statutory Authority G.S. 57C-2-01; 90-181.1; 90-186.

.0210 REGISTERED LIMITED LIABILITY PARTNERSHIPS

(a) Any registered limited liability partnership created to deliver veterinary medical services must be created pursuant to and in compliance with G.S. 59 and Article 11, G.S. 90 and the rules of the Board.

(b) All partners of a registered limited liability partnership organized under this Rules shall hold a license to practice veterinary medicine issued by the Board.

(c) A veterinarian who engages in the practice of veterinary medicine through a limited liability partnership must comply with the registration and other requirements of this Chapter, Article 11, G.S. 90, and the rules of the Board.

(d) A registered limited liability partnership created to deliver veterinary medical services and each of its partners must comply with Article 11, G.S. 90 and the rules of the Board with respect to the prior approval of the name of the partnership, including the provisions of G.S. 90-181.1.

(e) Limited liability partnerships organized under this Rule must be organized and operated in accordance with the requirements of G.S. 59. A limited liability partnership organized under this Rule to deliver veterinary medical services must register with the Board both prior to the delivery of any professional services and prior to registration with the office of the Secretary of State of North Carolina as required by G.S. 59-84.2.

(f) To register the limited liability partnership with the Board, the partners of a veterinary limited liability partnership must submit to the Board:

- (1) A registration fee as required by Rule .0108 of this Chapter; and
- (2) A certificate setting forth the names and addresses of each veterinarian who is a partner of the limited liability partnership, a representation that the partnership will be conducted in compli-

ance with G.S. 59 as well as Article 11, G.S. 90 and the rules of the Board, as well as bearing the notarized signatures of the partners subscribing to the documents certifying to the accuracy of the statements made therein.

(g) The Board shall furnish the limited liability partnership a Certificate of Registration from the Board certifying that each of the organizing partners is licensed to practice veterinary medicine in North Carolina, said Certificate to be filed by the limited liability partnership with the Secretary of State.

(h) The Certificate of Registration for a limited liability partnership shall be renewed annually in order to continue to be effective.

(i) The Board may request in writing such supplemental reports as it deems appropriate from any limited liability partnership registered with the Board pursuant to G.S. 59 and these Rules. The limited liability partnership shall file such reports with the Board's office within 30 days from the date it receives the request.

(j) Limited liability partnerships registered with the Board pursuant to G.S. 59 shall file a certified copy of all amendments to the partnership agreement within 30 days after the effective date of each amendment. They shall also file a copy of any amendment to the bylaws, certified to be a true copy by the managing partner of the limited liability partnership within 30 days after adoption of the amendments.

Statutory Authority G.S. 59-84.2; 59-84.3; 90-181.1; 90-186.

SECTION .0300 - APPLICATION, EXAMINATION AND LICENSING PROCEDURES

.0301 APPLICATION AND EXAMINATION

(a) All applicants for a license to practice veterinary medicine shall complete, sign and return the application form for veterinary license available from the Board.

(a) (b) All applicants for license by examination must successfully pass the licensure examination which is to be administered at least once annually. The Board may will review and evaluate the validity and accuracy of information contained in an application for ~~examination~~ licensure. If the prerequisites of G.S. 90-187 and G.S. 90-187.1 are met, the Board shall admit the applicant to the examination.

(b) (c) The nature of the examination is to determine the applicant's minimum competency to practice veterinary medicine within the state of North Carolina. The Board shall administer, in conformity with the testing service criteria, the Clinical Competency Test (CCT) and National Board Examination (NBE) as prepared by the ~~Professional Examination Service Board~~ or any other a qualified licensure examination service ~~adopted~~ approved by the Board.

(c) (d) The Board shall also administer a special North Carolina Practice Act Test Examination to evaluate the applicant's knowledge of Article 11 of Chapter 90 and 21

NCAC 66 of the North Carolina Administrative Code.

(d) (e) The Board shall ~~annually~~ establish the passing score for the current CCT₁ and NBE₁ and the North Carolina Examination, which shall include examination on the statutes and administrative rules governing the practice of veterinary medicine in the State.

(e) (f) The Executive Secretary/Director shall notify all applicants of the score received on the examinations. Thereafter, if all information has been verified as correct and truthful, and if the requirements of G.S. 90-187 and G.S. 90-187.1 have been met, he shall issue a certificate of registration license to those successfully ~~completing~~ passing the examinations.

(g) This Section does not apply to the licensure, relicensure or reinstatement of a veterinarian whose license has been suspended or revoked by the Board or who presently has a complaint or other matter pending in another state or jurisdiction that has or may result in discipline against the applicant's license to practice veterinary medicine in that State.

(h) In determining whether to issue a license to practice veterinary medicine, the Board may consider all information obtained as a result of the application, including but not limited to all testing information, including examination scores of the examinations identified herein; and information obtained pursuant to the requirements of Rule .0310 of this Section or information obtained about the applicant which the applicant was required to have furnished.

Statutory Authority G.S. 90-185(1); 90-185(6); 90-187; 90-187.1.

.0303 SPECIAL REG./VETERINARY TECH., INTERNS/PRECEPTES; RENEWAL OF TECHNICIAN REGISTRATION

(a) Applications for registration as a veterinary technician, veterinary student intern, or veterinary student preceptee must be on application forms provided by the Board, accompanied by the required application fee. Applicants must be at least 18 years of age and must be of good moral character.

(b) To become registered as a veterinary technician, the applicant must meet the qualification requirements of G.S. 90-181(11). ~~The successful completion of the National Examination for Technicians as prepared by the Professional Examination Service and the North Carolina Oral-Practical Test shall be a prerequisite to registration as a veterinary technician. An applicant successfully scoring 70 percent or higher shall be deemed to have achieved a passing score. All applicants must successfully pass the North Carolina Veterinary Technician Examination administered by the Board. Applicants who meet the criteria of G.S. 90-181(11)a must also successfully pass the National Examination for Technicians as prepared by the Board or a qualified licensure examination service approved by the Board.~~

(c) To become registered as a veterinary student intern or veterinary student preceptee, no examination is required but

the applicant must demonstrate to the satisfaction of the Board that he meets the qualification requirements of G.S. 90-181(9) and (10) and is currently employed by a licensed veterinarian who directs ~~or~~ and supervises his work.

(d) ~~Upon information or complaint, the Board may revoke or suspend the registration of, or otherwise discipline, any veterinary technician, veterinary student intern or veterinarian student preceptee upon any of the following grounds:~~

- (1) ~~The unlawful practice of veterinary medicine, except as permitted by and within the limits of the registration as defined herein and in G.S. 90-187.6. The services of a technician, intern, or other veterinary employee shall be limited to services under the direction and supervision of a licensed veterinarian. Such supervision and direction shall be construed to require the physical presence of the veterinarian. The rendering of veterinary medical services in a satellite clinic, mobile clinic, emergency clinic or other facility where the supervising veterinarian is not on the premises shall subject the registrant to revocation of registration.~~
- (2) ~~The violation of G.S. 90-187.6(b) concerning the acceptance of a fee or compensation.~~
- (3) ~~Representing to members of the public that the registrant is a licensed veterinarian or otherwise misleading the public in the belief that the registrant is a licensed veterinarian.~~
- (4) ~~Any other grounds for disciplinary action applicable to licensed veterinarians as defined in G.S. 90-187.8 or the rules of the Board.~~

(d) All registrations of veterinary technicians shall be renewed every 24 months upon payment by the registrant of the renewal fee adopted by the Board, provided the registrant is otherwise eligible for renewal.

Statutory Authority G.S. 90-185(6); 90-186(3); 90-187.6.

.0304 DISCIPLINE OF VETERINARY TECHNICIANS, INTERNS/PRECEPTES: MANDATORY STDS OF CONDUCT

Upon information or complaint, the Board may revoke or suspend the registration of, or otherwise discipline, any veterinary technician, veterinary student intern or veterinarian student preceptee upon any of the following grounds:

- (1) The unlawful practice of veterinary medicine, except as permitted by and within the limits of the registration as defined herein and in G.S. 90-187.6. The veterinary medical services of a technician, intern, or other veterinary employee shall be limited to those services permitted by G.S. 90-187.6 under the direction and supervision of a licensed veterinarian. Such supervision and direction shall be construed to require the physical presence of the veterinarian in the facility at a proximity close enough to conduct the appropriate level of supervision for the particular task being

performed by the employee. The rendering of veterinary medical services in a satellite clinic, mobile clinic, emergency clinic or other facility where the supervising veterinarian is not on the premises shall subject the registrant to revocation of registration.

- (2) The violation of G.S. 90-187.6(b) concerning the acceptance of a fee or compensation.
- (3) Representing to members of the public that the registrant is a licensed veterinarian or otherwise misleading the public in the belief that the registrant is a licensed veterinarian.
- (4) Any other grounds for disciplinary action applicable to licensed veterinarians as defined in G.S. 90-187.8 or the rules of the Board.

~~All registrations of veterinary technicians shall expire biennially on December 31 of every other year, but may be renewed by application to the Board and payment of a renewal fee of five dollars (\$5.00) per year.~~

Statutory Authority G.S. 90-185(6); 90-186(3).

.0305 TEMPORARY PERMITS

(a) Applicants for temporary permits shall apply to the Board utilizing the application form for a temporary permit. The Board or its designee shall not act upon the application until fully completed. The Board may independently verify the information provided on the form by the applicant.

(b) Applicants for temporary permits must meet the qualifications as established in G.S. 90-187.4. No temporary permits will be issued to applicants who are not graduates of an accredited school of veterinary medicine as defined by the American Veterinary Medical Association. At the time of submission of an application for a temporary permit, the applicant shall provide to the Board the name(s) and location(s) of the licensed veterinarian(s) within the state who shall be the supervising veterinarian(s). The supervising veterinarian(s) shall be in good standing with the Board and an active practitioner(s) within the State ~~for the three years preceding the application.~~ The Board, or its designee, shall approve the application and notify the applicant before the applicant shall be authorized to engage in the supervised practice of veterinary medicine within the state.

(c) A temporary permit shall expire or be revoked as provided in G.S. 90-187.4 and no official notification of the revocation or expiration shall be given to the permittee. Temporary permits may not be renewed but may be reissued, within the discretion of the Board, after submission of a new application.

(d) The Board shall determine the restrictions for the temporary permit, which restrictions shall be recorded on the permit. In addition to any other restrictions or conditions imposed by the Board, the supervising veterinarian shall ensure that another veterinarian is available to supervise the holder of the temporary permit on those occasions when the supervising veterinarian is unable to be available for supervision.

Statutory Authority G.S. 90-185(6); 90-187.4.

.0306 LICENSE WITHOUT EXAMINATION

(a) The Board may issue a license without written examination other than the North Carolina License Examination to a qualified applicant who meets the criteria as established in G.S. 90-187.3.

(b) An applicant must certify that he is currently an active, competent practitioner in good standing and this certification must be verified by the state licensing Board from the applicant's most recent clinical practice. An applicant is deemed to have practiced in another state at least three of the last five years immediately preceding his application if the applicant certifies that he has engaged in the unexempt practice of veterinary medicine as defined in the North Carolina Practice Act for that length of time. The licensure requirements in the other state are deemed substantially equivalent to those required by this state if the other state administered the same standardized licensing tests (excluding the North Carolina Practice Act Test) as were administered in North Carolina at the time of the applicant's original licensing in the other state and the tests were graded in accordance with North Carolina grading criteria.

(c) The Board may orally or practically examine any person qualifying for licensing under this Rule by administering a nationally recognized clinical test ~~and the North Carolina Practice Act Test.~~ in addition to the North Carolina Examination.

Statutory Authority G.S. 90-185(6); 90-187.3.

.0307 REVOCATION/SUSPENSION/TEMPORARY PERMITS/SPECIAL REGISTRATIONS

(a) A temporary permit may be summarily revoked by a majority vote of the Board upon notice but without a hearing.

(b) ~~A special~~ The registration of a veterinary assistant technician may be suspended or revoked, and the assistant technician may be disciplined, in accordance with the same due process procedures as are provided for individual licenses and corporate registrants under the provisions of G.S. 150B or G.S. 90, Article 11, of the North Carolina General Statutes, or Board Rules.

Statutory Authority G.S. 90-185(6); 90-187.4(b); 90-187.8.

.0308 REINSTATEMENT AFTER REVOCATION

Any person whose license or registration has been suspended or revoked may apply for reinstatement without written examination subject to any terms and conditions as contained in the final agency decision issued by the Board upon revoking or suspending the person's license or registration. The Board, at its discretion, may conduct a fact-finding hearing to determine ~~the moral fitness or state of rehabilitation of any person applying for reinstatement.~~ whether sufficient cause exists to justify, in the discretion of

the Board, the reissuance of the license or registration.

Statutory Authority G.S. 90-185(6); 90-187.9.

**.0310 PENDING COMPLAINT/DISCIPLINE
AGAINST APPLICANTS LICENSED/
REGISTERED IN OTHER STATES**

(a) Upon complaint or information, and within the Board's discretion, the Board may deny a license required by Article 11, G.S. 90.

(b) Applicants for a license to practice veterinary medicine may be required upon initial application to inform the Board in writing of any prior discipline or administrative action, or the equivalent thereof, against the applicant's license to practice veterinary medicine in another state or jurisdiction; or any pending complaint or unresolved disciplinary or administrative action, or the equivalent thereof, against the applicant's license to practice veterinary medicine in another state.

(c) The applicant shall be required to furnish or give the Board permission to obtain true and accurate copies of documents relevant to consideration of the prior or pending disciplinary action.

(d) In reviewing an applicant's application, the Board may consider information determined to be reliable, including but not limited to information from the National Disciplinary Data Base about the licensee, or information obtained from other state veterinary medical boards, or other federal or state agencies.

(e) The applicant for license to practice veterinary medicine may be required to furnish all facts relating to the existence of any pending charges alleging violation of a federal or state criminal statute or law, in this or any other country.

Statutory Authority G.S. 90-185(2); 90-185(6); 90-186(3); 90-187; 90-187.3.

.0311 LIMITED VETERINARY LICENSE

(a) A "limited veterinary license" or "limited license" is a license as defined in G.S. 90-181(4).

(b) The terms and restrictions of the scope or areas of practice of veterinary medicine of the holder of the limited veterinary license shall be determined by the Board upon consideration of all criteria deemed relevant by the Board in its discretion to effectuate the purposes of the limited license, including but not limited to:

- (1) whether the applicant is licensed to practice veterinary medicine in other states of the United States, or other countries or jurisdictions, and whether those licenses are in good standing at the time of the consideration of the application; and
- (2) the length of time the applicant has been licensed in good standing to practice veterinary medicine; and
- (3) the reasons which the applicant offers for re-

- (4) questing a limited veterinary license; and whether facts available to the Board indicate the applicant's application has merit; and
- (5) any other criteria bearing directly upon applicant's capability and need for a limited veterinary license.

Statutory Authority G.S. 90-185(1); 90-185(6); 90-181(4).

**SECTION .0600 - ADMINISTRATIVE HEARINGS:
PROCEDURES**

.0601 COMMITTEE ON INVESTIGATIONS

(a) Upon receipt of a charge alleging misconduct against a licensee or registrant of the Board, the Executive Secretary shall inform the accused party of the nature of the charges as filed with the Board.

(b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.

(c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.

(d) The charges as filed with the Board, the answer and reply may be referred to the Committee on Investigations (hereinafter referred to as "Committee"). The Committee shall consist of three members of the Board, one of whom shall serve as chairman.

(e) The Committee shall investigate the complaint referred to it by the Board and as part of the investigation may:

- (1) Assign the complaint to the Board's investigator who shall submit a written report to the Committee.
- (2) Invite the complaining party and the accused party before the Committee to receive their oral statements, but neither party shall be compelled to attend.
- (3) Conduct any other type of investigation as is deemed appropriate by the Committee.

(f) Upon the completion of the investigation, the Committee shall determine whether or not there is probable cause to believe that the accused party has violated any standard of misconduct which would justify a disciplinary hearing based upon the grounds as specified in Article 11 of Chapter 90 of the North Carolina General Statutes or this Chapter.

(g) If probable cause is found, the Committee shall direct the legal counsel for the Board to file a Notice of Hearing.

(h) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the Committee may issue a reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 15 days after receipt of the reprimand, the accused party may refuse the reprimand and request that Notice of Hearing be issued pursuant to Chapter 150B of the North Carolina General Statutes or this Chapter. Such refusal and request shall be addressed to the Committee and filed with the

Executive ~~Secretary~~ Director for the Board. The legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.

(i) If no probable cause is found, the Committee shall dismiss the charges and prepare a statement of the reasons therefore which shall be mailed to the accused party and the complaining party.

(j) If no probable cause is found, but it is determined by the Committee that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the Committee may issue a letter of caution to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the Board.

(k) A Board member who has served on the Committee is deemed disqualified to act as a presiding officer or member of the Board assigned to render a decision in any administrative disciplinary proceeding brought pursuant to a Notice of Hearing for which that member has sat in an investigative capacity as a member or chairman of the Committee.

(l) The Board may assess and recover against persons holding licenses, limited licenses, temporary permits, faculty certificates, Zoo veterinary certificates or any certificates of registration issued by the Board, costs incurred by the Board for the following expenses, respectively, that have been incurred by the Board in the investigation, prosecution, hearing or other administrative action in final decisions or orders where those persons are found to have violated the Veterinary Practice Act or Administrative Rules of the Board:

- (1) legal expenses, including reasonable attorney fees, incurred by the Board; and
- (2) witness fees and statutorily-allowed expenses for witnesses; and
- (3) direct costs of the Board in taking or obtaining of depositions of witnesses; and
- (4) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order.

The costs assessed may be assessed pursuant to final decision or orders entered with or without the consent of the person holding the respective license, registration permit or certificate; no costs referred to in this Paragraph will be assessed against a person holding a respective license, permit registration or certificate for an investigation or action in the nature of disciplinary action other than a final decision or order of the Board, unless and except expressly consented to by said person in a Consent Order approved by the Board.

(m) A civil monetary penalty of up to five thousand dollars (\$5,000) for each violation of Article 11, G.S. 90 or

Board rule may be imposed and collected from a person holding a license (the word "license" is as defined in G.S. 90-187.8(a)) upon a finding by the Board of the relevant factor or factors in G.S. 90-187.8(b)(1) through (6). With respect to this subsection, the phrase "violation of Article 11, G.S. 90 or Board rule" shall be deemed to mean Article 11, G.S. 90, the Veterinary Practice Act, or the administrative rules of the Board, and shall include final decisions, orders, and consent orders, letters of reprimand and other permitted disciplinary actions, but it expressly excludes letters of caution issued by the Board.

Statutory Authority G.S. 90-185(3); 90-185(6); 90-186(7).

.0606 WHO SHALL HEAR CONTESTED CASES

All contested case hearings will be conducted by the full Board or by a panel consisting of at least a majority of the members of the Board provided, however, the term "members" shall not be deemed to include a vacant position of a board member, whether the vacancy is the result of resignation, non-appointment, or other cause. An individual who has been granted a hearing or is a party to a contested case who has received a notice of hearing may stipulate that a contested case hearing may be conducted by a panel consisting of fewer than a majority of the members of the Board. When required by Chapter 150B of the North Carolina Statutes the Board shall apply to the Office of Administrative Hearings for the designation of an administrative law judge to hear the case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 90-185; 150B-11; 150B-38; 150B-40.

SECTION .0700 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS

.0703 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within five days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of one of the members of the Board or the Board's Executive ~~Secretary~~ Director; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena,

the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, the majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Statutory Authority G.S. 90-185; 150B-11; 150B-38; 150B-39.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to amend rules cited as 25 NCAC 1B .0201, .0203 - .0205, .0207, .0213, .0414, .0431, .0437; 1C .0412; repeal rules cited as 25 NCAC 1B .0206; 1D .2301 - .2305; and adopt rules cited as 25 NCAC 1B .0438 - .0439; 1D .0520.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:00 am on December 7, 1995 at the State Personnel Development Center, 101 West Peace Street, Raleigh, NC 27603.

Reason for Proposed Action:

25 NCAC 1B .0201, .0203 - .0205, .0207, .0213 - These rules are being amended in order to clarify the role of the commission administrator with respect to the rule-making; to correct the address of the State Personnel Commission and the Director of the OSP; to clarify the situations where any fees may be awarded and the causes for reinstatement; and to make changes in the SPC case management procedures. 25 NCAC 1B .0206 - This rule is being repealed because the process involved is no longer available.

25 NCAC 1B .0438 - .0439 - These rules are being adopted to clarify the basis for the awarding of attorney fees by the SPC and to clarify the grounds, time limit and procedure for seeking a continuance of a contested case.

25 NCAC 1C .0412 - This rule is proposed to be amended in order to offer guidance and clarification to state agencies in determining personnel changes subject/not subject to a probationary period.

25 NCAC 1D .0520 - This rule proposed to be adopted in order to offer guidance and clarification to state agencies regarding the term appointment ended.

25 NCAC 1D .2301 - .2305 - These rules no longer applicable because pay scale has been changed.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, NC 27603.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0200 - RULE-MAKING

.0201 CONTENT AND PROCEDURE

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule of the Commission shall address a petition to:

~~Director of Administrator,~~ State Personnel Commission
~~Department of Administration~~
Office of State Personnel
116 West Jones Street

Raleigh, North Carolina ~~27611-27603-8004~~

(b) The petition ~~should~~ shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;

- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) any data supporting proposal;
- (5) effect fiscal note on the impact of the proposed rule on existing practices in the area involved, including cost factors;
- (6) names of those most likely to be affected by the proposed rule with addresses if reasonably known;
- (7) name(s) and address(es) of petitioner(s).

(c) The ~~director~~ Administrator will examine the petition and weigh the information therein in relation to the public interest. ~~He~~ The Administrator will consider all the contents of the submitted petition, plus any additional information ~~he~~ the Administrator deems relevant. In so doing, the ~~director~~ Administrator is empowered to seek a resolution of the matter to the satisfaction of the ~~commission~~ Commission. If this is not accomplished, ~~he~~ the Administrator will make a recommendation to the ~~commission~~ Commission for the denial of the petition or the institution of rule-making proceedings, as the case may be.

(d) At the next regularly scheduled Commission meeting within 60 days of after submission of the petition, the commission Commission will render a final decision. If the decision is to deny the petition, the executive director Administrator will notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, the commission Commission, within 30 days of submission, will initiate rule-making proceedings by issuing a rule-making notice, as provided in these rules in accordance with the requirements of Title 26 of the North Carolina Administrative Code.

Statutory Authority G.S. 150B-16.

.0203 ADDITIONAL INFORMATION

Persons desiring information in addition to that provided in a particular rule-making notice may contact:

~~Director of Administrator, State Personnel Commission~~
~~Department of Administration~~
Office of State Personnel
 116 West Jones Street
 Raleigh, North Carolina 27611 27603-8004

Statutory Authority G.S. 150B-12.

.0204 PRESENTATIONS

(a) Any person desiring to present oral data, views, or arguments on the proposed rule must, at or at least five days before the public hearing, file a notice with:

~~Director of Administrator, State Personnel Commission~~
~~Department of Administration~~
Office of State Personnel
 116 West Jones Street
 Raleigh, North Carolina 27611 27603-8004

(b) Notice may be waived or a failure to give notice may be excused by the presiding officer for good cause. Any person permitted to make an oral presentation is encouraged to must submit a written copy of the presentation to the ~~director Administrator or other hearing officer~~ prior to or at the public hearing.

Statutory Authority G.S. 150B-12(d).

.0205 ORAL PRESENTATIONS

A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual desires. Presentations may not exceed ~~15~~ three minutes unless, upon request, either before or at the hearing, the ~~commission~~ Commission should grant an extension of time.

Statutory Authority G.S. 150B-129(d).

.0206 ACKNOWLEDGMENT OF REQUESTS

~~Upon receipt of a request to make an oral presentation, the director will so acknowledge and inform the requesting party of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.~~

Statutory Authority G.S. 150B-12(d).

.0207 WRITTEN SUBMISSIONS

(a) Any person may file a written submission containing data, comments, or arguments after publication of a rule-making notice up to, and including the day of the public hearing unless a longer period is stated in the notice or an extension of time is granted for good cause following notice. Written submissions except when otherwise stated in the particular rule-making notice must be sent to:

~~Director of Administrator, State Personnel Commission~~
~~Department of Administration~~
Office of State Personnel
 116 West Jones Street
 Raleigh, North Carolina 27611 27603-8004

(b) Such submissions must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

Statutory Authority G.S. 150B-12(e).

.0213 REQUESTS FOR DECLARATORY RULING

All requests for declaratory rulings shall be written and mailed to :

~~Director of State Personnel~~
~~Department of Administration~~
Office of State Personnel

116 West Jones Street
Raleigh, North Carolina 27611 27603-8004

Statutory Authority G.S. 150B-17.

SECTION .0400 - APPEAL TO COMMISSION

.0414 SITUATIONS IN WHICH ATTORNEY FEES MAY BE AWARDED

Attorney's fees may be awarded by the ~~commission~~ Commission only in the following situations:

- (1) the grievant is reinstated ~~to the same or similar position from a demotion or a dismissal in accordance with Rule .0428;~~
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated;
- (3) the grievant is determined, by the ~~commission~~ Commission or by the agency's internal grievance procedure, to have been discriminated against in violation of G.S. 126-16 or 126-36;
- (4) the grievant is awarded back pay as the result of a successful grievance alleging a violation of G.S. 126-7.1;
- (5) the grievant is the prevailing party in an appeal of a Commission decision;
- (6) any combination of the situations listed in this Rule.

Attorney's fees may be awarded when any of the above situations occur, either within the agency internal grievance ~~procedure~~ procedure, in an appeal to the State Personnel Commission, or in an appeal of a to the State Personnel Commission decision.

Statutory Authority G.S. 126-4(11); 126-7.1.

.0431 CAUSES FOR REINSTATEMENT

The State Personnel Commission shall order reinstatement from dismissal or demotion only upon a finding of lack of substantive just cause or discrimination prohibited by N.C.Gen. Stat. 126-16 or 126-36. For the purpose of this Rule, and in addition to those matters normally constituting just cause, failure to give issue the required number and kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall also be considered to constitute a lack of substantive just cause.

Statutory Authority G.S. 126-4(9); 126-35; 126-37.

.0437 APPEAL TO THE STATE PERSONNEL COMMISSION: PROCEDURES

(a) The State Personnel Commission shall receive the record in the contested cases forwarded by the Office of Administrative Hearings and make a final administrative decision in the case. The Administrator to the Commission ~~Office of State Personnel~~ shall be responsible for the administrative management of contested cases coming before

the Commission for its review and decision.

(b) Oral Argument. Either party to a contested case may request the opportunity to appear before the State Personnel Commission and make oral argument. Such arguments must be based solely on the information contained in the record submitted by the OAH. Oral arguments must be requested in writing no more than 15 calendar days after notice of review by the Commission has been sent to the parties. The notice of review shall contain the date, time and place of the Commission meeting at which the case will be reviewed. If a party fails to request oral argument in a timely fashion, that party may not present oral argument without specific permission from the full Commission. Each party requesting oral argument shall be allotted a maximum of 15 minutes for the presentation, unless the time period is extended by a vote of the Commission.

(c) Briefs, Legal Memoranda, Attorney's Fees Requests. All briefs, and legal memoranda ~~memoranda, or attorney's fees requests~~ must be received by the Office of State Personnel no later than 10 working days prior to the date of the Commission meeting for which a case is scheduled for review. Such documents must also be served upon ~~submitted on a timely basis to~~ the opposing party. Such a document received after the deadline will be presented to the Commission only after the party has shown that the opposing party ~~received~~ was served with the document at least 10 working days before the Commission meeting and the Commission has voted to receive it. Attorney's Fees Requests must be presented to the Commission by the prevailing party to a Commission Decision and Order at least one month before the meeting at which the matter is to be considered. Such requests must also be served upon the opposing party. The Commission will notify the parties upon the receipt of a request for attorney's fees and provide an opportunity for the opposing party to file objections to the fees requested.

(d) Written Exceptions, Proposed Alternative Findings, Conclusions and Recommendations. Each party shall submit written exceptions to the recommended decision of the Administrative Law Judge, unless the party accepts the recommended decision in its entirety. Any party may choose to submit proposed alternative findings of fact and conclusions of law. Exceptions and alternative findings and conclusions must be received by the Office of State Personnel no later than 10 working days prior to the date of the Commission meeting for which a case is scheduled for review. Written exceptions must be specifically drawn. Exceptions shall indicate which finding, conclusion or recommendation is being excepted to and the basis for the exception being taken. Reference must be made to the transcript pages (and volumes, where applicable), if the transcript of the hearing was made. Where a party excepts to a finding, conclusion or recommendation and requests its deletion or amendment, an alternative finding, conclusion or recommendation shall be made. Such a document received after the deadline will be presented to the Commission only after the party has shown that the opposing party ~~received~~

was served with the document at least 10 working days before the Commission meeting and the Commission has voted to receive it. The Commission shall have the authority to adopt the findings of fact and conclusions of the Administrative Law Judge, or to amend the same, or to adopt alternative findings of fact and conclusions of law, either from those submitted by the parties or drawn from its own review of the whole record. Parties shall submit 10 copies of each pleading (with three holes in the left margin) filed with the Commission.

(e) Proposed Decision and Order. Each party to a contested case shall submit a proposed Decision and Order for consideration by the Commission in that case. The proposed Decision and Order must be received by the Office of State Personnel no later than 10 working days prior to the date of the Commission meeting for which a case is scheduled for review. The Commission may, in its discretion, delay decision in a case until all parties have submitted a proposed Decision and Order. The proposed Decision and Order shall indicate which findings, conclusions and recommendations of the Administrative Law Judge are being adopted, which findings, conclusions and recommendations of the Administrative Law Judge are being deleted or amended and why, and what new findings, and conclusions are being adopted. The proposed Decision and Order shall contain a an order in the case for the signature of the Administrator to the Commission, consistent with and supported by the findings and conclusions. Parties shall submit 10 copies of each pleading (with three holes in the left margin) filed with the Commission.

(f) Service on Opposing Parties. Copies of all documents required by this Rule shall be served on the opposing party, but no later than 10 working days prior to the date of the Commission meeting for which a case is scheduled for review.

(g) Notification. The parties or, when applicable, the legal representative of record for a party, will be notified, by certified mail, return receipt requested, of the Commission's decision. The Commission's decision will be prepared and sent out by the Office of State Personnel. Copies or the content of a specific decision and order shall not be released to non-parties until the Office of State Personnel has knowledge that all parties have received a copy of the Decision and Order.

~~(h) This Rule is based upon the assumption that both parties are represented by legal counsel. If any party is not represented by legal counsel, this Rule shall be interpreted liberally so as not to deny a fair opportunity to any party for Commission review of a recommended decision.~~

Statutory Authority G.S. 126-4.

.0438 ESTABLISHMENT OF REASONABLE ATTORNEY FEES BY THE COMMISSION

The State Personnel Commission establishes a schedule for the awarding of reasonable attorney fees in contested cases. The Commission's established rates are available upon

request of the Administrator to the Commission. The Commission's established rates for the reimbursement of legal fees and costs are as follows:

- (1) Attorney fees incurred in connection with the contested case proceeding before the Commission and with any successful appeal of a Commission decision in the General Courts of Justice at a maximum rate of one hundred twenty-five dollars (\$125.00) per hour;
- (2) Law Clerk, Paralegal, or Legal Assistant fees at a maximum rate of fifty-five dollars (\$55.00) per hour;
- (3) Travel time at a maximum rate of one-half the applicable hourly attorney or legal support staff fee rate;
- (4) Costs at the actual cost.

Fees will not be awarded unless requested by an attorney or the Petitioner and documented by an itemized, per activity, accounting of the hours expended, in addition to a copy of the fee agreement between the parties and any relevant receipts or other documentation of prior payment.

Statutory Authority G.S. 126-4(11).

.0439 CONTINUANCES

The State Personnel Commission hereby delegates to the Administrator to the Commission the authority to rule upon the availability of a continuance in any case on the Commission docket which does not require an extension of jurisdiction pursuant to G.S. 150B-44. The Administrator shall grant a request for continuance where the request is made at least five days prior to the Commission meeting at which the case is docketed and where good cause exists for the continuance request. Good cause shall include, but not be limited to: a court order requiring a continuance; a documented conflict in a superior forum; death or incapacitating illness of a party, representative, or attorney of a party; lack of adequate notice of the Commission meeting; a required substitution of an attorney of a party; mutual consent of the parties where settlement negotiations or other relevant matters necessitate a continuance. Requests for continuance shall be made in writing and directed as follows:

Administrator, State Personnel Commission
Office of State Personnel
116 West Jones Street
Raleigh, North Carolina 27603-8004

Continuance requests for good cause received within five days of the applicable Commission meeting or in cases where a G.S. 150B-44 jurisdictional extension is required, must be ruled upon by the Commission. Continuance requests received after the deadline for the submission of objections, exceptions, briefs, memoranda, or other pleadings does not extend the time period for the submission of these documents.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .0400 - APPOINTMENT

.0412 PERSONNEL CHANGES SUBJECT TO/ NOT SUBJECT TO A PROBATIONARY PERIOD

A probationary period shall not be required when any of the following changes are made:

- (1) Promotion of an employee who has a permanent or time-limited permanent appointment;
- (2) Transfer of an employee who has a permanent or time-limited permanent appointment;
- (3) Demotion of an employee who has a permanent or time-limited permanent appointment;
- (4) Reinstatement after leave of absence, without pay;
- (5) The return of a policy-making/confidential exempt employee to a nonpolicy-making position.

Personnel Changes may be subject to a probationary period. An employee with reduction in force priority consideration may be required to serve a new probationary period as outlined in 25 NCAC 1D .0510 (Priority Reemployment Consideration).

Statutory Authority G.S. 126-4.

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0520 APPOINTMENT ENDED

An "Appointment Ended" separation occurs when an exempt or policy-making/confidential exempt employee's appointment ends or when separated for reasons other than cause. These separations may occur whenever the Agency Head or the Governor determines that the services of the employee are not longer needed.

Statutory Authority G.S. 126-5.

SECTION .2300 - ACCELERATED PAY PLAN

.2301 POLICY

(a) It is the policy of the State to maintain an Accelerated Pay Plan for employees at the lowest pay rates in consideration of the labor market and economic indicators as well as assuring the advancement and retention of a fully competent work force. The State Personnel Commission shall identify which pay rates are to be subject to the Accelerated Pay Plan and amend the Plan as necessary, based on the labor market and economic indicators. Upward movement within the Accelerated Pay Plan shall require that the job performance of an employee meet performance expectations. Employees participating in the Plan may not receive an

~~additional performance pay increase.~~

(b) Implementation of this Plan is subject to the availability of funds in an appropriate salary reserve fund.

Statutory Authority S.L. 1990, c. 1066, s. 37.

.2302 ELIGIBILITY FOR THE PLAN

(a) Employees assigned to a classification in pay grades 50, 51, 52, or 53 whose salaries fall at a rate within the Accelerated Pay Plan are eligible.

(b) Employees must have a current work plan in place at least 30 days after entering the job.

Statutory Authority S.L. 1990, c. 1066, s. 37.

.2303 ELIGIBILITY FOR ACCELERATED PAY INCREASES

(a) ~~Employees having probationary or permanent full-time or part-time (half-time or more) appointments whose performance meets or exceeds requirements are eligible for accelerated pay increases.~~

(b) ~~Employees eligible to move to the minimum of the range after completing three months of service. After three months at the minimum (or above, if the employee is hired above the minimum), the employee is eligible for an accelerated pay increase, the amount to be determined by the Office of State Personnel based on available funds. Thereafter, the employee is eligible for an accelerated pay increase every six months up to the maximum rate designated by the accelerated pay plan schedule. The employee's appointment may be changed from probationary to permanent at the time of the salary increase or it may be changed later as a separate action.~~

(c) ~~If an employee completes the required months of service but does not meet performance expectations, the employee's salary cannot be increased. Once the employee has again completed the required length of service (three or six months, whichever is applicable), the employee is reviewed once more and granted the increase if performance expectations are met.~~

Statutory Authority S.L. 1990, c. 1066, s. 37.

.2304 ADMINISTRATION

(a) New hires normally shall be employed at the hiring rate of the applicable grade or at the Special Entry Rate if one exists. New employees with more experience than the required minimum may start at a higher rate in the Plan.

(b) Supervisors must review each employee's performance at the end of each time period (three or six months, whichever is applicable) to determine if the employee meets expectations. The Supervisor must record the rating on the agency's Accelerated Pay Plan Performance Review Form. The employee, supervisor and the supervisor's manager must sign and date the form each time a review occurs.

(c) ~~Following the prescribed timeframes of the Plan, employees may progress to the highest pay rate for the~~

appropriate grade in the Plan.

(d) ~~Once an employee has reached the highest rate provided by the Plan in their grade, the employee's eligibility for future performance salary increase shall be determined in accordance with the Performance Management System and Performance Increase Policies. A work plan must be in place at least six months after the highest rate is awarded.~~

(e) ~~If an employee is demoted or reallocated down to a grade and salary rate within the Plan, the employee becomes eligible to participate in accelerated pay increases on the same basis as other employees in the Plan.~~

(f) ~~If an employee is promoted or reallocated up to a grade above those included in the Plan, the employee is eligible for performance increases in accordance with the Performance Management System and Performance Increase Policies. Employees must work in the new job with a current work plan for at least six months after receiving an accelerated pay increase before they are eligible for another performance increase.~~

Statutory Authority S.L. 1990, c. 1066, s. 37.

.2305 DOCUMENTATION

(a) ~~Personnel Action Forms PD-105 must be submitted for employees receiving accelerated pay increases. The type of action will be "Accelerated Pay Increase" or "Acc Pay Inc."~~

(b) ~~The agency head's (or designee's) signature on the PD-105 shall serve as evidence that the employee is eligible and has achieved the required performance rating.~~

(c) ~~Increases may be effective the first of the pay period following completion of the minimum time required for the increase.~~

Statutory Authority S.L. 1990, c. 1066, s. 37.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to repeal rules cited as 26 NCAC 2A .0101-.0102, .0201-.0212, .0301, .0303, .0401-.0406, .0501-.0507; 2B .0101, .0103-.0104, .0201-.0204, .0301-.0303, .0401; and adopt rules cited as 26 NCAC 2C .0101-.0109, .0201-.0206, .0301-.0305, .0401-.0409, and .0501-.0503.

Temporary: These Rules were filed as a temporary rules effective November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00am on Decem-

ber 1, 1995 at the Office of Administrative Hearings, Hearing Room #2, 422 North Blount Street, Raleigh, NC.

Reason for Proposed Action: To repeal existing rules and adopt new rules that establish the procedures for submitting rules and documents for publication in the North Carolina Register and the North Carolina Administrative Code. Changes are necessitated by the changes to the Administrative Procedure Act, amended by the 1995 Regular Session of the General Assembly.

Comment Procedures: Any interested person may comment either orally at the public hearing or submit written comments addressed to: Anna Baird, Rule-making Coordinator, PO Drawer 27447, Raleigh, NC 27611-7447. All written comments must be received by 5:30pm on December 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government funds.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0100 - PUBLICATION

.0101 PUBLICATION OF THE NCAC

(a) ~~Administrative rules adopted by state agencies and occupational licensing boards pursuant to General Statute Chapter 150B shall be filed with the Office of Administrative Hearings to be published in the North Carolina Administrative Code.~~

(b) ~~Filings for rules and rule changes shall be filed in proper physical form in accordance with the rules in this Subchapter.~~

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0102 AVAILABILITY OF THE NCAC

(a) ~~The Office of Administrative Hearings has available for public inspection all past and current rules filed under the provisions of G.S. 150B. Copies are available at a cost as established in 26 NCAC 1 .0103.~~

(b) ~~Pursuant to G.S. 150B-21.18, the Codifier of Rules licensed the indexing, marketing, sales, reproduction, and distribution for subscription services to the NCAC to Barelays Law Publishers, PO Box 3066, 400 Oyster Point Boulevard, South San Francisco, California 94080, telephone 1-800-888-3600.~~

Statutory Authority G.S. 150B-21.18; 150B-21.25.

SECTION .0200 - GENERAL FILING REQUIREMENTS

.0201 ADOPTION OF RULES

(a) ~~An adoption is a completely new rule with a new rule number.~~

(b) ~~In order to be acceptable for filing with the Office of Administrative Hearings, each adopted rule shall be accompanied by a completed typed Submission for Filing form.~~

(c) ~~The original and one copy of the rule as adopted shall be filed in the Office of Administrative Hearings. The original shall be in the proper form required by Rule .0402 of this Subchapter.~~

(d) ~~If the adopted rule differs in any way from the proposed rule published in the North Carolina Register, the original shall identify changes by striking through deleted portions and underlining added portions.~~

(e) ~~If publication of the proposed rule in the North Carolina Register was not required, the filing shall be accomplished as set out in Paragraphs (a), (b) and (c) of this Rule.~~

Statutory Authority G.S. 150B-21.19.

.0202 AMENDMENTS TO RULES

(a) ~~Deletion, addition or change to an existing rule is an amendment to the rule.~~

(b) ~~In order to be acceptable for filing with the Office of Administrative Hearings, each amended rule shall be accompanied by a completed typed Submission for Filing form.~~

(c) ~~The original and one copy of the rule as amended shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.~~

(d) ~~If the amended rule has text added or deleted that differs from the proposed rule published in the North Carolina Register, those changes shall be highlighted on the copy of the original.~~

Statutory Authority G.S. 150B-21.19.

.0203 REPEAL OF RULES

(a) ~~A repeal of a rule is the deletion of the entire text of a rule. When a rule is repealed, that rule number cannot be used again. The number, catchline, and final history note will remain in the North Carolina Administrative Code permanently for publication and reference purposes.~~

(b) ~~In order to be acceptable for filing with the Office of Administrative Hearings, a repealed rule shall be accompanied by a completed typed Submission for Filing form.~~

(c) ~~The original and one copy of a statement of repeal shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.~~

Statutory Authority G.S. 150B-21.19.

.0204 CONTINUATION/RECODIFICATION

(a) ~~A notification for continuation of rules pursuant to G.S. 150B-21.7 shall be submitted to the Office of Adminis-~~

~~trative Hearings on a Transfer and Recodification form and accompanied by a Table of Contents setting out the catchline and number of each rule for each Section affected by the transfer.~~

(b) ~~An agency may request that one or more of its rules be recodified pursuant to G.S. 150B-21.20. The agency shall submit to the Office of Administrative Hearings a letter containing the rule citations and reasons for the recodification accompanied by a copy of the existing rule(s) and an original of the rule(s) as it should appear after recodification. The recodification is effective upon approval by the Codifier of Rules.~~

Statutory Authority G.S. 150B-21.7; 150B-21.19; 150B-21.20.

.0205 SUBMISSION FOR FILING FORM

(a) ~~Each adopted or amended rule must be accompanied by a completed typed Submission for Filing form certifying that the rule being filed has been officially adopted or amended.~~

(b) ~~Repealed rules may be combined on a single Submission for Filing form if the rules are contained in the same Chapter and the repeal effective date is the same.~~

(c) ~~All Submission for Filing forms shall be signed by the agency head, a subordinate officer or employee designated by the agency head in writing under G.S. 143B-10(a), or a rule-making coordinator for the agency.~~

Statutory Authority G.S. 150B-21.19.

.0206 CHANGES IN CATCHLINES OR HISTORY NOTES

~~Request for changes in catchlines or history notes can be made by memo to the Office of Administrative Hearings. This memo must clearly identify the changes including a full citation.~~

Statutory Authority G.S. 150B-21.19; 150B-21.20.

.0207 RULE SUMMARIES

~~For distribution and publication purposes, the Codifier of Rules has statutory authority to summarize rules which he judges would be impracticable to distribute or to publish in full. An agency with rules which it believes would be impracticable to distribute or publish may request that the Codifier of Rules examine such rules. If he determines that the submitted rules are inappropriate for distribution or publication, he may request the agency to draft a summary rule. The full rule or rules must be filed and the summary published in the North Carolina Administrative Code in accordance with statutory requirements.~~

Statutory Authority G.S. 150B-21.17(b); 150B-21.18; 150B-21.20.

.0208 ILLUSTRATIONS/NOTES

An agency may include material which is not a substantive portion of the rule but is an illustration of something in the rule. The material which is meant only as an illustration must be set aside by preceding it with the word "Note:". This should be done after the text of the rule. The agency is advised to make sure it has not included any substantive portion of the rule as an illustration in this manner. Illustrations are merely examples or clarifications which, when not read, do not change the meaning of the rule.

Statutory Authority G.S. 150B-21.18; 150B-21.19; 150B-21.20.

.0209 REFUSAL OF RULES

(a) ~~The Office of Administrative Hearings will refuse to accept for filing any adopted, amended or repealed rules which do not meet the requirements of this Subchapter.~~

(b) ~~If the filing is not acceptable, it will be returned to the agency with an indication of the changes needed.~~

Statutory Authority G.S. 150B-21.19.

.0210 ACCEPTANCE OF RULES FILED

(a) ~~When an action is accepted for filing by the Office of Administrative Hearings, the agency will be sent a completed copy of the Submission for Filing form which indicates that the action is acceptable for filing.~~

(b) ~~When the rule has been printed by the Office of Administrative Hearings, the agency head, a subordinate officer or employee designated by the agency head in writing under G.S. 143B-10(a), or the rule making coordinator will receive one copy of the document at no charge.~~

Statutory Authority G.S. 150B-21.19; 150B-21.24.

.0211 AGENCY FINAL COPY

~~Within 30 days of the date appearing on the final computer copy, an agency shall notify the Office of Administrative Hearings of any typographical errors made by OAH in entering the rule into the NCAC. Any typographical errors found by the agency after the 30 days shall be corrected by an amendment pursuant to G.S. 150B-21.5.~~

Statutory Authority G.S. 150B-21.5.

.0212 MAILING LIST

~~OAH will distribute information of a general nature concerning rule filings and related matters to the rule making coordinator(s) designated in writing by each agency head. It is the responsibility of each agency to keep such designations current with OAH.~~

Statutory Authority G.S. 150B-21.

SECTION .0300 - TEMPORARY RULEMAKING

.0301 FILING TEMPORARY RULES:

ADOPTIONS: AMENDMENTS: REPEALS

~~In order to be acceptable for filing with the Office of Administrative Hearings, each temporary adopted or amended rule shall be accompanied by a completed typed Temporary Rule Certification form. Temporary repealed rules may be combined on a single Temporary Rule Certification form if the rules are contained in the same chapter and the repeal effective date is the same. The filing shall include the proper copies required by Rules .0201, .0202, or .0203 of this Subchapter, a notice form and filing that complies with the requirements of 26 NCAC 2B for publication in the North Carolina Register. The completed Temporary Rule Certification form shall contain the agency's written statement of its findings of need for the temporary rule.~~

Statutory Authority G.S. 150B-21.1; 150B-21.19.

.0303 PROCEDURE FOR REVIEW OF TEMPORARY RULES

~~The Codifier of Rules shall review temporary rules as provided by G.S. 150B-21.1.~~

Statutory Authority G.S. 150B-21.1.

SECTION .0400 - PHYSICAL FORMAT

.0401 GENERAL TYPING INSTRUCTIONS

(a) ~~The general typing instructions are as follows:~~

- ~~(1) an 8 1/2 by 11 inch sheet of paper (no letter head, carbon copies or onion skin accepted);~~
- ~~(2) one side of the sheet only, with a one inch margin on all sides; and~~
- ~~(3) black ink; use no less than 10 and no larger than 12 point type only.~~

~~(b) The sheet may not be turned around in the typewriter to accommodate wide charts.~~

Statutory Authority G.S. 150B-21.19.

.0402 ORIGINAL COPY OF RULES

~~All rules filed must be accompanied by an original copy of the rule.~~

~~(1) Adoptions and Amendments:~~

- ~~(a) The original copy shall contain an introductory sentence as specified in Rule .0403 of this Section.~~
- ~~(b) The rule shall be in the format prescribed in Section .0500 of this Subchapter with the following additional requirements:~~

- ~~(i) any text to be deleted from an existing rule shall be indicated by slash through marks; and~~
- ~~(ii) any new or added text shall be underlined.~~

~~(c) Each rule shall be followed by a history note which contains the Statutory Authority, effective date, and any previous history references if applicable.~~

(2) ~~Repeals:~~

- (a) ~~The original copy shall contain an introductory sentence as specified in Rule .0403 of this Section.~~
- (b) ~~Repealed rules will contain the rule number and rule name, followed by the complete history note noting the repealed effective date. No text is shown on the original copy of a repealed rule.~~
- (c) ~~Repealed rules shall be combined with a single history note if the rules are consecutive numerically and the effective dates and repealed dates are identical. Authority cites and any other dates are to be combined.~~

Statutory Authority G.S. 150B-21.19.

.0403 INTRODUCTORY STATEMENT

- (a) ~~Each rule submitted to the Office of Administrative Hearings for filing shall have an introductory statement immediately preceding the rule. This introductory statement must contain the full official rule citation and the action being taken.~~
- (b) ~~If notice of the proposed rule was published in the North Carolina Register, the introductory statement shall include the volume, issue and page or pages of the notice publication.~~
- (c) ~~If the adopted or amended rule differs in any way from the proposed rule published in the North Carolina Register, the introductory statement shall include the words "with changes".~~
- (d) ~~If notice of the proposed rule was not required for publication in the North Carolina Register, the introductory statement must include a citation to law exempting the rule from notice.~~

Statutory Authority G.S. 150B-21.5; 150B-21.19.

.0404 BODY OF RULES

- (a) ~~The rule number, rule name and body of the rule shall immediately follow the introductory statement for that rule. Generally, there will be no lines skipped in the body of the rule except in unusual circumstances, such as tables. All paragraphs should be indented two spaces or to the third space from the left margin.~~
- (b) ~~All subsections and lists within the rule must be clearly labeled with the correct number or letter in parentheses as specified in Rules .0506 and .0507 of this Subchapter.~~

Statutory Authority G.S. 150B-21.19.

.0405 HISTORY NOTE

- (a) ~~Each rule submitted to the Office of Administrative Hearings for filing shall have a history note containing the following information:~~
 - (1) ~~the authority for that rule;~~
 - (2) ~~the effective date of the rule, (last line if an~~

~~adoption);~~

- (3) ~~the effective date of the four most recent amendments to that rule or repealed line, whichever is applicable; and~~
- (4) ~~any other history references pertaining to the rule.~~

(b) ~~The history note shall be typed after the text or after any illustrations in the rule skipping one line and typing the words "History Note:" indented two spaces from the left margin or on the third space followed by the words:~~

- (1) ~~"Statutory Authority" in a rule where the authority is strictly statutory, or "Authority" in a rule where the authority is other than statutory. This would then be followed by the properly cited General Statute or authority.~~
- (2) ~~On the next line, blocked under the letter "S" in "Statutory", the abbreviation "Eff." would be followed by the original effective date of the rule in full.~~
- (3) ~~On the next line all amendment dates to the original rule shall be listed following the words "Amended Eff.". The four most recent amendment dates shall be given in chronological order, with the most recent amendment listed first.~~

~~All items in the history note are separated by semicolons.~~

(c) ~~Authorities cited in history notes shall be cited according to the most current edition of the rules of citation contained in "A Uniform System of Citation", a copy of which is available in the Office of Administrative Hearings, except that the General Statutes of North Carolina shall be identified by the designation "G.S." rather than "N.C. Gen. Stat.".~~

Statutory Authority G.S. 150B-21.19.

.0406 HISTORY NOTE: TEMPORARY ADOPTIONS: AMENDMENTS: REPEALS

- (a) ~~A temporary adoption will have a history note which starts with the following statement: "Filed as a Temporary Rule Eff. (date), for a Period of (length) Days to Expire on (date)". The next line would then contain the citation of authority.~~
- (b) ~~A temporary amendment is placed on the first line of the history note regardless of any prior history. The history note shall retain prior effective and amendment dates if applicable. The following wording shall be used: "Filed as a Temporary Amendment Eff. (date), for a Period of (length) Days to Expire on (date)".~~
- (c) ~~A temporary repeal is placed on the first line of the history note, regardless of any prior history. The history note shall retain prior effective and amendment dates if applicable. The following wording shall be used: "Filed as a Temporary Repeal Eff. (date), for a Period of (length) Days to Expire on (date)".~~

Statutory Authority G.S. 150B-21.19.

SECTION .0500 - CODIFICATION OF RULES

.0501 CODIFICATION SYSTEM

(a) ~~All rules to be filed with the Office of Administrative Hearings shall be codified within the system described in this Section.~~

(b) ~~The North Carolina Administrative Code has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the North Carolina Administrative Code is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.~~

(c) ~~All rules when filed with the Office of Administrative Hearings shall be assigned a title, chapter, and a rule number. The agency may also assign either or both a subchapter designation and section number to the rule.~~

(d) ~~The official citation to the North Carolina Administrative Code identifies the material cited by title, chapter, or subchapter (if any), and section or rule number.~~

Statutory Authority G.S. 150B-21.19.

.0502 CHAPTER SUBDIVISION

~~The chapter is the second largest subdivision of the North Carolina Administrative Code. Each major department shall be responsible for assigning chapter numbers within its title.~~

Statutory Authority G.S. 150B-21.19.

.0503 SUBCHAPTER SUBDIVISION

(a) ~~The subchapter is the largest of the optional subdivisions and shall be used to divide chapters into broad subject areas, small agencies, sections of a division, etc., when an agency finds it appropriate. When subdividing a chapter into subchapters, an agency shall subdivide the entire chapter into at least two subchapters as with any subdivision.~~

(b) ~~All subchapters of the North Carolina Administrative Code are represented by consecutive capital letters following the chapter number.~~

Statutory Authority G.S. 150B-21.19.

.0504 SECTION SUBDIVISION

(a) ~~The section is the smaller of the optional subdivisions and the smallest subdivision which contains rules. It shall be used by the agency to place together small groups of rules in the same subject area. These small groups of rules shall be within chapters or subchapters depending upon whether the first optional subdivision is used.~~

(b) ~~All sections are represented as the first two digits of a four digit number following a decimal. They shall be consecutive starting with Section .0100.~~

(c) ~~Because the two digits are set aside, there is a limit of~~

~~99 sections within any chapter or subchapter. It is recommended, however, that the number of sections within a chapter or subchapter be kept well below the maximum in order to provide easily for the addition of new sections in the future and to increase the ease with which particular rules can be located.~~

Statutory Authority G.S. 150B-21.19.

.0505 RULE

~~The rule is represented by the second two digits of the four numbers following a decimal. Rules shall be numbered consecutively. The last two digits of the first rule will be "01".~~

Statutory Authority G.S. 150B-21.19.

.0506 SUBSECTIONS OF RULES

(a) ~~A rule containing more than one separate idea may need to be subdivided. The codification system within the North Carolina Administrative Code allows for a rule to be subdivided five times as follows: (a), (b), (c); (1), (2), (3); (A), (B), (C); (i), (ii), (iii); (I), (II), (III). All subsections of rules shall be represented by this order, and each label shall be in parentheses.~~

(b) ~~Points to remember when subdividing a rule are:~~

- (1) ~~When subdividing a rule always subdivide the entire rule into Paragraphs.~~
- (2) ~~Never subdivide a rule too far as it may make the rule hard to understand.~~

Statutory Authority G.S. 150B-21.19.

.0507 LISTING WITHIN RULES

~~When a rule is not subdivided but contains a list, the sequence of labels for the lists is: (1), (2), (3); (a), (b), (c); (i), (ii), (iii); (A), (B), (C); (I), (II), (III). If there is a list within a subdivision, the rule shall follow the sequence in Rule .0506(a) of this Section. If the rule is not subdivided, but contains an item or a list which is subdivided, the sequence in this Rule is followed. In no event will a rule begin with a list. A list contained within a rule must always be preceded by some form of introductory material.~~

Statutory Authority G.S. 150B-21.19.

SUBCHAPTER 2B - NORTH CAROLINA REGISTER

SECTION .0100 - PUBLICATION

.0101 PUBLICATION OF THE NORTH CAROLINA REGISTER

(a) ~~Proposed administrative rules of state agencies and occupational licensing boards, and executive orders shall pursuant to General Statute Chapter 150B be submitted to the Office of Administrative Hearings to be published in the North Carolina Register.~~

(b) ~~Submissions for publication shall be filed in proper physical form in accordance with the rules in this Subchapter.~~

Statutory Authority G.S. 150B-21.17.

.0103 SUBMISSION AND PUBLICATION SCHEDULE

(a) ~~In order to be acceptable for publication, submissions for proposed administrative rules and executive orders shall be submitted to the Office of Administrative Hearings by the closing date for the issue as determined under Paragraph (c) of this Rule.~~

(b) ~~An agency may file submissions by facsimile (fax) transmission by 5:30 p.m. on the closing date for the issue as determined under Paragraph (c) of this Rule. In order to be acceptable for publication, the original submission must be received by the Office of Administrative Hearings within five business days following the faxed transmission.~~

(c) ~~The North Carolina Register will be published on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday or holiday for State employees. The last day for filing for any issue of the North Carolina Register is 15 days before the issue date excluding Saturdays, Sundays and holidays for State employees, except that the last date for electronic filing is ten days before the issue date excluding Saturdays, Sundays and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the North Carolina Register is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday or State holiday. A half holiday shall be considered as other days and not as a holiday. A table of publication deadlines and schedules to include the issue date, last day for filing, last day for electronic filing, earliest date for public hearing, last day of required comment period, and earliest effective date for at least the next 12 issues will be published in each issue of the North Carolina Register. This is published as a public service and the computation of time periods are not to be deemed binding or controlling.~~

Statutory Authority G.S. 150B-21.17.

.0104 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) ~~The North Carolina Register is published twice monthly by the Office of Administrative Hearings and is available at a cost of one hundred and twenty dollars~~

~~(\$120.00) plus N.C. sales tax if applicable per year subscription.~~

(b) ~~A five percent discount shall be applied to the total subscription price when ordering multiple copies.~~

(c) ~~Requests for subscriptions shall be directed to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, (919) 733-2678.~~

Statutory Authority G.S. 150B-21.25.

SECTION .0200 - GENERAL FILING REQUIREMENTS

.0201 PUBLICATION OF PROPOSED RULES

(a) ~~In order to be acceptable for publication by the Office of Administrative Hearings, all notices required to be published in the North Carolina Register, pursuant to G.S. 150B-21.2, shall be accompanied by a completed typed notice form.~~

(b) ~~The original and one copy of the text of the rule as proposed shall be submitted to the Office of Administrative Hearings.~~

Statutory Authority G.S. 150B-21.17.

.0202 NOTICE FORMS

(a) ~~Based upon the type of notice as required in G.S. 150B-21.2, the agency shall complete one of the following appropriate notice forms:~~

- (1) ~~Notice of Text and Hearing;~~
- (2) ~~Notice of Text; or~~
- (3) ~~Notice on Subject Matter.~~

(b) ~~A completed notice form certifies that the statement of the subject matter or the text of the rule as proposed has been officially authorized by the agency for publication in the North Carolina Register.~~

(c) ~~More than one rule may be listed on a single form if the rules are promulgated by the same agency and the proposed effective dates and the public hearing dates are the same.~~

Statutory Authority G.S. 150B-21.17.

.0203 ACCEPTANCE FOR PUBLICATION

~~When a submission is accepted for publication by the Office of Administrative Hearings, the agency will be sent a completed copy of the notice form which indicates that the submission is acceptable for publication.~~

Statutory Authority G.S. 150B-21.17.

.0204 REFUSAL OF PUBLICATION

(a) ~~The Office of Administrative Hearings will refuse to accept for publication any notice form which does not meet the requirements of this Subchapter.~~

(b) ~~If the submission for notice is not acceptable, it will be returned to the agency with an indication of the changes~~

needed.

Statutory Authority G.S. 150B-21.17.

SECTION .0300 - PHYSICAL FORMAT

.0301 GENERAL TYPING INSTRUCTIONS

All notices required to be published in the North Carolina Register pursuant to G.S. 150B-21.2 shall be submitted in the form specified in 26 NCAC 2A .0401.

Statutory Authority G.S. 150B-21.17.

.0302 ORIGINAL COPY OF PROPOSED RULES

(a) The original copy of a rule as proposed to be adopted or amended by the agency shall meet the following requirements:

- (1) The original shall contain an introductory statement immediately preceding the rule. The statement must contain the full official rule citation and the action being taken.
- (2) Following the introductory statement, the body of the rule shall be in the form specified in 26 NCAC 2A .0404 and as follows:
 - (A) any text to be deleted from an existing rule shall be indicated by slash through marks; and
 - (B) any new or added text shall be underlined.
- (3) The specific authority shall be cited following the body of each rule.
- (4) Upon written request and with written approval from the Codifier in accordance with G.S. 150B-21.17(b), an agency may cite the minimum portion of the rule which is changed. Portions published shall give adequate notice of the change(s) to the rule.

(b) The original copy of a rule as proposed to be repealed by the agency shall meet the following requirements:

- (1) The original shall contain an introductory statement immediately preceding the rule. The statement must contain the full official rule citation and the action being taken.
- (2) Following the introductory statement the original shall contain a list of the rule number(s) and rule name(s) of the items to be repealed.
- (3) The specific authority shall be cited following the rule number and rule name for each repealed rule. The authority may be cited following a listing of repealed rules if the rules contain the same authority.

Statutory Authority G.S. 150B-21.17.

.0303 STATEMENT OF SUBJECT MATTER

Insofar as possible, the Statement of Subject Matter should be contained on the Notice on Subject Matter form, but if necessary, the statement may be continued on a separate page, provided that the separate page conforms with the

typing instructions of 26 NCAC 2A .0401.

Statutory Authority G.S. 150B-21.17.

SECTION .0400 - ELECTRONIC FILINGS

.0401 ELECTRONIC FILINGS AND FORMAT

(a) In order to be considered an electronic filing, an agency shall submit an electronic version of the proposed rule(s) in addition to the filing requirements in this Subchapter.

(b) The electronic form shall be a 3 1/2 inch (1.44 Mb) or 5 1/4 inch (1.2 Mb) high density diskette compatible with or convertible to WordPerfect 5.2, DOS 5.0 or succeeding versions. A list of compatible and convertible software is available from OAH.

(c) The filed diskette shall identify the name of the document to be retrieved and the software used.

(d) An edited copy of the proposed rule(s) and the filed diskette shall be returned to the agency.

(e) OAH will refuse to accept for publication any notice in which the diskette is not compatible or convertible to the publication software.

Statutory Authority G.S. 150B-21.17.

SUBCHAPTER 2C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

.0101 DEFINITIONS

The following definitions shall apply throughout this Chapter:

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (4) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- (5) "Code" means the North Carolina Administrative Code.
- (6) "Commission" means the Rules Review Commission.
- (7) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- (8) "Original" means a printed copy of the document, not a photocopy.
- (9) "Register" means the North Carolina Register.
- (10) "Repeal" means the deletion of the entire text of

a rule. When a rule is repealed, that rule number shall not be used again. The number, rule name, and final history note shall remain in the Code permanently for publication and reference purposes.

Statutory Authority G.S. 150B-21.17; 150B-21.18.

.0102 ORIGINAL AND DUPLICATE COPY

(a) The agency shall submit an original and one copy of any document and form for publication in the Register or Code.

(b) The original and form shall each be permanently marked as the original.

(c) The agency shall include an additional copy of any permanent rule that is submitted to the Commission.

Statutory Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

.0103 ELECTRONIC VERSION

(a) The electronic version shall be a 3 1/2 inch (1.44 Mb) high density diskette compatible with or convertible to WordPerfect 6.1, DOS 5.0. (A list of compatible and convertible software is available from OAH.) The filed diskette shall identify the name of the document to be retrieved and the software used. OAH shall refuse to accept for publication any document in which the diskette is not compatible with or convertible to the publication software.

(b) An electronic version shall not be required if an agency that is unable to provide a diskette that is compatible with or convertible to WordPerfect 6.1, DOS 5.0 submits a written statement to the Codifier of Rules to that effect. This statement shall be signed by the agency head or rule-making coordinator.

Statutory Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

.0104 RETURN COPY

If an agency desires a returned copy of any document submitted to OAH, the agency shall submit an additional copy permanently marked as the agency's return copy.

Statutory Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

.0105 REFUSAL OF PUBLICATION

(a) OAH may refuse to publish any document submitted for publication in the Register or Code which does not meet its requirements.

(b) OAH shall return any such document to the agency with an indication of the changes needed.

(c) The agency may resubmit such document, but the date that OAH receives such resubmission shall govern the publication date.

Statutory Authority G.S. 150B-21.19.

.0106 RULE-MAKING COORDINATOR AND MAILING LIST

(a) Each agency head shall notify OAH in writing of the name and address of the agency's rule-making coordinator.

(b) The rule-making coordinator shall notify OAH of any change in the agency's address.

(c) Any person who desires to be on the OAH mailing list shall notify OAH in writing with their name and address.

Statutory Authority G.S. 150B-21.

.0107 GENERAL FORMAT INSTRUCTIONS

The agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

(1) Paper Specifications:

- (a) an 8½ by 11 inch sheet of plain white paper, 16 to 32 lb.;
- (b) one side of the sheet only;
- (c) black ink;
- (d) print font size shall be 10 point;
- (e) portrait print (8½ x 11), no landscape printing (11 x 8½);
- (f) numbered lines on the left margin with each page starting with line 1;
- (g) 1.5 line spacing;
- (h) each rule that has more than one page of text shall have page numbers appearing at the bottom of the page; and
- (i) no staples.

(2) Tab and Margin Settings:

- (a) Tab settings for all rules shall be set relative from the left margin at +0"Left, +0.125"Left, +0.375"Right, +0.563"Left, +0.75"Right, +0.938"Left, +1.13"Right, +1.31"Left, +1.5"Right, +1.69"Left, +1.88"Right. The default tab setting of every ½" can be used for tables and charts;
- (b) line numbers shall be set at .60 from left edge of paper; and
- (c) text shall be with a one inch margin on all sides.
- (3) The Introductory Statement shall start on page 1, line 1 of each rule.
- (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. Two lines shall be skipped between the introductory statement and each chapter, subchapter, and section name.
- (5) Two lines shall be skipped before starting the line that provides the rule number and rule name. The decimal in the rule number is placed in position 1. Two tabs are between the rule number and rule name. The rule name shall be in capital letters and the rule number and name shall be in bold

- print.
- (6) Body of the Rule:
- (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
 - (i) adoptions - new text shall be underlined;
 - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined;
 - (iii) repeals - text of the rule shall not be included;
 - (b) there will be no lines skipped in the body of the rule except in unusual circumstances, such as tables;
 - (c) the first level of text shall start with one tab and two spaces after parenthesis;
 - (d) the second level of text shall start with two tabs and one indent after parenthesis;
 - (e) the third level of text shall start with four tabs and one indent after parenthesis;
 - (f) the fourth level of text shall start with six tabs and one indent after parenthesis;
 - (g) the fifth level of text shall start with eight tabs and one indent after parenthesis;
 - (h) the sixth level of text shall start with ten tabs and one indent after parenthesis.
- (7) Charts or Tables shall be in a format that is accommodated by WordPerfect 6.1.
- (8) History Note:
- (a) shall be in italic font;
 - (b) start on the second line preceding the body of the rule;
 - (c) the first line of the History Note shall start in the first position; all lines following shall be five tabs;
 - (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
 - (e) the effective date of the original adoption of the rule shall be the next line preceding the authority. The abbreviation "Eff." shall be followed by this date;
 - (f) on the line following the "Eff." date, the four most recent amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
 - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date);"
 - (h) the repealed date of a rule shall be the last line of the history note and start with the words "Repealed Eff." followed by the date;
 - (i) all items in the history note are separated by semicolons with the last line ending with a period.

- (j) all history of a rule shall be in chronological order following the authority for the rule;
- (k) all dates in the history note shall be complete with the month spelled out, not contain any abbreviations.
- (9) Numbers within the text shall be as follows:
 - (a) numbers from one to nine shall be spelled out;
 - (b) figures shall be used for numbers over nine;
 - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
- (10) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

Statutory Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

.0108 CITATION TO AUTHORITIES

(a) The agency shall cite authorities according to the most current edition of the rules of citation contained in "A Uniform System of Citation" except as listed in Paragraph (b) of this Rule. "A Uniform System of Citation" is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained from the Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, Massachusetts 02138 at a cost of seven dollars and fifty dollars (\$7.50).

- (b) The agency shall cite the following authorities as:
- (1) the General Statutes of North Carolina as "G.S.";
 - (2) the Session Laws of North Carolina as "S.L. 19xx, c. x, s. x";
 - (3) an Executive Order issued by the Governor as "E.O. #, (Governor's name), (year)";
 - (4) the North Carolina Administrative Code as "(Title#) NCAC (Chapter or Subchapter #) (.####)"; and
 - (5) the North Carolina Register as "(Vol. #) NCR (Issue #), (page #).

Statutory Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

.0109 ILLUSTRATIONS/NOTES

An agency may include material in the text of a rule which is not a substantive portion of the rule but is an illustration of something in the rule. Illustrations shall be merely examples or clarifications which, when not read, do not change the meaning of the rule. The material which is meant only as an illustration shall be set aside by preceding it with the word "Note:".

Statutory Authority G.S. 150B-21.18; 150B-21.19; 150B-21.20.

SECTION .0200 - CODIFICATION OF RULES

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0201 CODIFICATION SYSTEM

(a) All rules shall be codified within the system described in this Section.

(b) OAH shall assign a title number to any agency that publishes its rules in the Code.

(c) The agency shall arrange its rules in Chapters, and arrange them in subchapters. The agency shall arrange the chapters or subchapters into sections, and the sections into rules.

(d) The agency may reserve in writing a specified chapter, subchapter, section or rule for future use.

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0202 SUBCHAPTER SUBDIVISION

(a) An agency may use the subchapter to divide chapters into subject areas.

(b) When subdividing a chapter into subchapters, an agency shall subdivide the entire chapter into at least two subchapters.

(c) A subchapter of the Code shall be represented by a capital letter following the chapter number. Subchapters shall be lettered consecutively unless a subchapter letter has been reserved.

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0203 SECTION SUBDIVISION

(a) The agency shall place rules in the same subject area in one section. The section is the subdivision that contains rules.

(b) All sections shall be represented as the first two digits of a four digit number following a decimal. Sections shall be consecutive starting with Section .0100 unless a section number has been reserved. There is a limit of 99 sections within any chapter or subchapter.

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0204 RULE

The rule shall be represented by the second two digits of the four numbers following a decimal. Rules shall be numbered consecutively unless a rule number has been reserved. The last two digits of the first rule shall be "01".

Statutory Authority G.S. 150B-21.18; 150B-21.19.

.0205 SUBSECTIONS OF RULES

An agency shall subdivide a rule containing more than one idea into paragraphs. Such paragraphs may be subdivided as follows: (a), (b), (c); (1), (2), (3); (A), (B), (C); (i), (ii), (iii); (I), (II), (III). All subsections of rules shall be represented by this order, and each label shall be in parentheses.

.0206 LISTING WITHIN RULES

(a) When a rule is not subdivided into paragraphs but contains a list, the sequence of labels for the lists shall be: (1), (2), (3); (a), (b), (c); (i), (ii), (iii); (A), (B), (C); (I), (II), (III). A rule shall not begin with a list. A list contained within a rule shall be preceded by some form of introductory material.

(b) If there is a list within a paragraph, the rule shall follow the sequence in Rule .0205 of this Section.

Statutory Authority G.S. 150B-21.18; 150B-21.19.

SECTION .0300 - THE NORTH CAROLINA REGISTER

.0301 SUBMISSION AND PUBLICATION SCHEDULE

(a) Submissions for publication in the Register shall be received in OAH by the closing date for the issue as determined under Paragraph (b) of this Rule.

(b) OAH shall publish the Register on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, OAH shall publish the Register on the next State business day. The last day for filing for any issue of the Register shall be 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the Register shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or State holiday, in which event the period shall run until the preceding day which is not a Saturday, Sunday, or State holiday. OAH shall publish in each issue of the Register a table of publication deadlines and schedules for at least the next 12 issues. This table is published as a public service and the computation of time periods are not to be deemed binding or controlling.

Statutory Authority G.S. 150B-21.17.

.0302 AVAILABILITY OF THE NORTH CAROLINA REGISTER

(a) An annual subscription to the Register shall be one hundred and ninety-five dollars (\$195.00) plus NC sales tax if applicable.

(b) An annual electronic subscription shall be two hundred and thirty-five dollars (\$235.00) plus NC sales tax if applicable.

(c) Individual issues shall be ten dollars (\$10.00) plus N.C. sales tax if applicable.

(d) A five percent discount shall be applied to the total subscription price when ordering multiple copies.

(e) A person requesting a subscription shall direct the request to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678.

Statutory Authority G.S. 150B-21.25.

.0303 NOTICE OF PERMANENT RULE-MAKING PROCEEDINGS

Permanent rule-making shall begin with a Notice of Rule-Making Proceedings pursuant to G.S. 150B-21.2(b). The agency shall make such notice on a form provided by OAH.

Statutory Authority G.S. 150B-21.17.

.0304 PUBLICATION OF RULE-MAKING AGENDA

(a) If an agency publishes a rule-making agenda, the agency shall submit the agenda, the submission form, and an electronic version of the agenda.

(b) OAH shall return to the agency an edited copy of the agenda and the filed diskette.

Statutory Authority G.S. 150B-21.17.

.0305 PUBLICATION OF NOTICE OF TEXT

(a) Based upon the type of notice as required in G.S. 150B-21.2(c) or (g), the agency shall complete one of the following forms provided by OAH:

- (1) Notice of Text and Hearing; or
- (2) Notice of Text.

(b) All rules submitted for publication by an agency at the same time, with the same proposed effective date, and with the same public hearing date and location if a hearing is scheduled, shall be listed on a single form.

(c) The agency shall submit the text of the proposed rule and an electronic version. OAH shall return to the agency an edited copy of the rule and the filed diskette.

(d) A rule proposed to be adopted or amended shall meet the following requirements:

- (1) The rule shall contain an introductory statement immediately preceding the text. The statement shall contain the rule citation and the action proposed to be taken.
- (2) Following the introductory statement, the rule number, name, text and history note shall be in the form specified in Rule .0107 of this Subchapter and as follows:
 - (A) any text to be deleted from an existing rule shall be indicated by strikeout marks;
 - (B) any new or added text shall be underlined; and
 - (C) punctuation shall be considered a part of the previous word, such as:
 - (i) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and
 - (ii) when punctuation is added after an existing word, the existing word shall be struck

through and followed by the word and punctuation underlined.

(e) A rule proposed to be repealed shall meet the following requirements:

- (1) The rule shall contain an introductory statement. The statement shall contain the rule citation and the action proposed to be taken.
- (2) Following the introductory statement, the rule shall contain the number and rule name of the rule proposed to be repealed.
- (3) A history note shall follow the rule number and name.

Statutory Authority G.S. 150B-21.17.

SECTION .0400 - NORTH CAROLINA ADMINISTRATIVE CODE

.0401 PUBLICATION OF A PERMANENT RULE

The agency shall submit a permanent rule for publication in the Code with the following:

- (1) An original submission form and copy (Rule .0402 of this Section).
- (2) An original and copies of the permanent rule (Rule .0102 of this Subchapter) prepared in accordance with Rule .0107 of this Subchapter containing:
 - (a) an introductory statement (Rule .0403 of this Section);
 - (b) the body of the rule (Rule .0404 of this Section);
 - (c) any changes in the rule (Rule .0404 of this Section);
 - (d) the history note (Rule .0405 of this Section).
- (3) A return copy, if desired (Rule .0104 of this Subchapter).

Statutory Authority G.S. 150B-21.19.

.0402 SUBMISSION FOR PERMANENT RULE FORM

(a) The agency shall submit a completed typed Submission for Permanent Rule form for each rule submitted for publication in the Code, except that the agency shall submit a single Submission for Permanent Rule form for all repealed rules that are codified within the same section and are consecutive numerically.

(b) The agency head or rule-making coordinator shall sign the Submission for Permanent Rule form. If the agency head has designated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation. It is only necessary to submit one copy of such designation with all rules filed by an agency for a single month's review by the Commission.

Statutory Authority G.S. 150B-21.19.

.0403 INTRODUCTORY STATEMENT

(a) The agency shall include an introductory statement immediately preceding each rule submitted to OAH for publication in the Code. This introductory statement shall contain the rule citation and the action taken.

(b) If notice of the proposed action was published in the Register, the agency shall include the volume, issue and page or pages of the notice publication in the introductory statement.

(c) If the text differs in any way from the proposed rule published in the Register, the agency shall include the underlined words "with changes" in the introductory statement.

(d) When an agency repeals a rule that was noticed to be amended, the agency shall state that the rule was originally proposed to be amended but is repealed in the introductory statement.

(e) If notice of the proposed rule was not required for publication in the Register, the agency shall include a citation to the statute exempting the rule from notice in the introductory statement.

Statutory Authority G.S. 150B-21.19.

.0404 BODY OF THE RULE

(a) The agency shall prepare for publication in the Code any permanent rule not published in the Register or that does not differ in any way from the proposed rule published in the Register according to the general format instructions in Rule .0107 of this Subchapter.

(b) If a permanent rule differs in any way from the proposed rule published in the Register, the following shall apply:

- (1) An agency shall identify changes in an adopted rule by striking through deleted portions, and underlining added portions. The unchanged text shall not be underlined.
- (2) An agency shall identify changes in an amended rule as follows:
 - (A) when text has been added, the text added shall be underlined and highlighted on a copy of the rule;
 - (B) when existing text has been deleted, the text deleted shall be struck through and highlighted on a copy of the rule;
 - (C) when text that was proposed to be deleted has been restored, the restored text shall be highlighted, but not underlined or struck through, on a copy of the rule; and
 - (D) when text that was proposed to be added has been deleted, the deleted proposed text shall not be shown, but a highlight mark shall be inserted where the proposed text is omitted.
- (3) If the agency repeals a rule originally noticed to be amended, then the agency shall submit the rule as a permanent repeal.

Statutory Authority G.S. 150B-21.19.

.0405 HISTORY NOTE

The agency shall include a history note for each rule submitted to OAH for publication in the Code, containing the following information:

- (1) the authority for the rule;
- (2) the effective date of the adoption of the rule;
- (3) the effective date of the four most recent amendments to the rule;
- (4) the effective date of the repeal; and
- (5) any other history references pertaining to the rule.

Statutory Authority G.S. 150B-21.19.

.0406 CHANGES TO RULE, SECTION OR CHAPTER NAMES AND HISTORY NOTES

An agency shall make a request for changes to a rule, section or chapter name and to a history note in writing to OAH. This letter shall cite the rule, identify the changes, and be signed by the agency head or rule-making coordinator.

Statutory Authority G.S. 150B-21.19; 150B-21.20.

.0407 RECODIFICATION OF RULES

An agency may request that one or more of its rules be recodified. The agency shall submit a letter to OAH containing the citation to the existing rule and the recodified citation, and the reasons for the recodification. The letter shall be signed by the agency head or rule-making coordinator. The recodification shall be effective upon approval by OAH. OAH may refuse to approve a recodification when the recodification does not facilitate the use of the Code.

Statutory Authority G.S. 150B-21.7; 150B-21.18; 150B-21.19; 150B-21.20.

.0408 TRANSFER OF RULES TO ANOTHER AGENCY

An agency desiring to transfer rules pursuant to G.S. 150B-21.7 shall submit a letter to OAH requesting such transfer. The letter shall contain the citation to the existing rule, the recodified citation, and the authority for the transfer. The letter shall be signed by the agency head or rule-making coordinator.

Statutory Authority G.S. 150B-21.7; 150B-21.18; 150B-21.19.

.0409 AGENCY FINAL COPY OF PERMANENT RULES

(a) OAH shall send a final draft of a permanent rule to the agency's rule-making coordinator after the rule is filed with OAH.

(b) Within 30 days of the date appearing on the final draft, the agency shall notify OAH in writing of any typographical errors made by OAH in entering the rule into

the Code. Any typographical errors found by the agency after the 30 days may be corrected by an amendment to the rule.

Statutory Authority G.S. 150B-21.5; 150B-21.20.

SECTION .0500 - TEMPORARY RULES

.0501 PUBLICATION OF A TEMPORARY RULE

The agency shall submit a temporary rule for review by OAH and publication in the Code with the following:

- (1) An original submission form and copy (Rule .0502 of this Section).
- (2) An original and copies of the temporary rule (Rule .0102 of this Subchapter) prepared in accordance with Rule .0107 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0403 of this Subchapter);
 - (b) the body of the rule (Rule .0404 of this Subchapter);
 - (c) the history note (Rule .0405 of this Subchapter).
- (3) A return copy, if desired (Rule .0104 of this Subchapter).

Statutory Authority G.S. 150B-21.19.

.0502 TEMPORARY RULE CERTIFICATION FORM

(a) The agency shall submit a completed typed Temporary Rule Certification form for a rule to be submitted for publication in the Code. The agency shall submit a single Temporary Rule Certification form for temporary rules when:

- (1) the rules are codified within the same chapter in the Code;
- (2) the finding for the action is the same;
- (3) the proposed effective date is the same; and
- (4) the rules are submitted at the same time for review by the Codifier of Rules.

(b) The agency head shall sign the Temporary Rule Certification form. If the agency head has designated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation.

Statutory Authority G.S. 150B-21.19.

.0503 APPEARANCE BY AGENCY

(a) The Codifier may request that a representative of the agency appear before him during the review to clarify the agency's finding of need or to consider additional information submitted by the agency or any interested person.

(b) Failure of the agency to appear may result in a finding that the criteria for a temporary rule have not been met.

Statutory Authority G.S. 150B-21.1.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

AGRICULTURE

Structural Pest Control Division

| | | |
|-----------------------------------|---------------|----------|
| 2 NCAC 34 .0904 - Prohibited Acts | RRC Objection | 10/18/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

| | | |
|---|---------------|----------|
| 15A NCAC 18A .2509 - Plan Review and Approval | | |
| Rule Withdrawn by Agency | | 09/21/95 |
| 15A NCAC 18A .2531 - Wading Pools | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 18A .2531 - Spas and Hot Tubs | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |

Environmental Management

| | | |
|---|---------------|----------|
| 15A NCAC 2B .0212 - Fresh Surface Water Quality Standards for Class WS-I Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 2B .0214 - Fresh Surface Water Quality Standards for Class WS-II Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 2B .0215 - Fresh Surface Water Quality Standards for Class WS-III Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 2B .0219 - Fresh Surface Water Quality Standards for Class B Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 2B .0222 - Tidal Salt Water Quality Standards for Class SB Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 2B .0224 - High Quality Waters | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |

Health: Epidemiology

| | | |
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| 15A NCAC 19H .0702 - Research Requests | | |
| Rule Withdrawn by Agency | | 09/21/95 |

Sedimentation Control

| | | |
|--|---------------|----------|
| 15A NCAC 4B .0020 - Inspections and Investigations | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |

Solid Waste Management

| | | |
|---|---------------|----------|
| 15A NCAC 13B .0815 - Incorporation by Reference | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 13B .0817 - Septage Management Firm Permits | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 13B .0819 - Septage Land Application Site Permits | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 13B .0820 - Septage Detention and Treatment Facility Permits | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |

RRC OBJECTIONS

| | | |
|---|---------------|----------|
| 15A NCAC 13B .0821 - Location of Septage Land Application Sites | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 13B .0822 - Management of Septage Land Application Sites | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |
| 15A NCAC 13B .0825 - Standards for Septage Treatment and Detention Facilities | RRC Objection | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 09/21/95 |

HUMAN RESOURCES

Facility Services

| | | |
|---|---------------|----------|
| 10 NCAC 3C .3001 - Definitions | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Cont'd | 10/18/95 |
| 10 NCAC 3C .3108 - Suspension of Admissions | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3205 - Discharge of Minor or Incompetent | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Cont'd | 10/18/95 |
| 10 NCAC 3C .3502 - Bylaws | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3602 - Responsibilities | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3603 - Personnel Policies and Practices | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3607 - Personnel Health Requirements | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3608 - Insurance | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3704 - Status | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .3902 - Manager | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .3904 - Patient Access | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .4003 - Policies and Procedures | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .4102 - Classification of Optional Emergency Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4104 - Medical Director | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4203 - Nursing Staff | RRC Objection | 07/13/95 |

RRC OBJECTIONS

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| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4303 - Nursing Services Maternal Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4307 - Nursing Staff of Neonatal Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4401 - Organization | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4502 - Pharmacist | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4508 - Space | | |
| RRC Rescinded its July Approval | | 10/18/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .4512 - Medications Dispensed | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .4702 - Organization | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4703 - Sanitation and Safety | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .4704 - Distribution of Food | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .4705 - Nutritional Support | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4801 - Organization | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .4905 - Tissue Removal and Disposal | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .5002 - Delivery of Care | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs. | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Cont'd | 10/18/95 |
| 10 NCAC 3C .5205 - Seclusion | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .5302 - Definitions | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5315 - Dental Care | RRC Objection | 07/13/95 |

RRC OBJECTIONS

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|--|---------------|----------|
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5318 - Activities and Recreation | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5319 - Social Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5325 - Ventilator Dependence | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5501 - Definitions | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req. | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Withdrawn by Agency | | 10/18/95 |
| 10 NCAC 3C .6102 - List of Referenced Codes and Standards | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3C .6208 - Obstetrical Department Requirements | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3H .2001 - Definitions | RRC Objection | 07/13/95 |

RRC OBJECTIONS

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|---|---------------|----------|
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2201 - Administrator | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2202 - Admissions | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2203 - Patients Not to be Admitted | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2206 - Medical Director | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2209 - Infection Control | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3H .2212 - Quality Assurance Committee | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2301 - Patient Assessment and Care Planning | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2302 - Nursing Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2401 - Maintenance of Medical Records | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2501 - Availability of Physician's Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2601 - Availability of Pharmaceutical Services | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Cont'd | 10/18/95 |
| 10 NCAC 3H .2604 - Drug Procurement | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Agency Revised Rule | Obj. Removed | 10/18/95 |
| 10 NCAC 3H .2605 - Drug Storage and Disposition | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2606 - Pharmaceutical Records | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2607 - Emergency Drugs | RRC Objection | 07/13/95 |
| No Response from Agency | Obj. Cont'd | 09/21/95 |
| Rule Returned to Agency | | 10/18/95 |
| 10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services | RRC Objection | 07/13/95 |

RRC OBJECTIONS

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|--|----------------------|-----------------|
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Cont'd</i> | <i>10/18/95</i> |
| 10 NCAC 3H .2801 - Activity Services | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .2802 - Social Services | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3003 - Ventilator Dependence | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3004 - Brain Injury Long-Term Care | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Cont'd</i> | <i>10/18/95</i> |
| 10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Cont'd</i> | <i>10/18/95</i> |
| 10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3021- Physician Req. for Inpatient Rehab. Facilities or Units | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req. | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Rule Returned to Agency</i> | | <i>10/18/95</i> |
| 10 NCAC 3H .3103 - Site | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>10/18/95</i> |
| 10 NCAC 3H .3201 - Required Spaces | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>10/18/95</i> |
| 10 NCAC 3H .3401 - Heating and Air Conditioning | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>10/18/95</i> |
| 10 NCAC 3H .3404 - Other | <i>RRC Objection</i> | <i>07/13/95</i> |
| <i>No Response from Agency</i> | <i>Obj. Cont'd</i> | <i>09/21/95</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>10/18/95</i> |

RRC OBJECTIONS

RRC has Objected on 07/13/95 to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:

10 NCAC 3C .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .2101 - .2105.

No Response from Agency

Obj. Cont'd 09/21/95

Obj. Removed 10/18/95

10 NCAC 3C .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033

RRC Objection 07/13/95

No Response from Agency

Obj. Cont'd 09/21/95

Rules Returned to Agency

10/18/95

10 NCAC 3H .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.

No Response from Agency

Obj. Cont'd 09/21/95

Obj. Removed 10/18/95

Medical Assistance

10 NCAC 26I .0101 - Purpose and Scope

RRC Objection 10/18/95

10 NCAC 26I .0102 - Requests for Formal and Informal Appeals

RRC Objection 10/18/95

10 NCAC 26I .0103 - Time Limits on Requests for Recipient/Applicant Informal Appeals

RRC Objection 10/18/95

10 NCAC 26I .0106 - Payment Pending Appeals

RRC Objection 10/18/95

10 NCAC 26I .0107 - Dismissal of Appeal

RRC Objection 10/18/95

Agency Revised Rule

Obj. Removed 10/18/95

LICENSING BOARDS AND COMMISSIONS

Board of Medical Examiners

21 NCAC 32H .0506 - Certification Requirement: Emergency Medical Dispatcher

RRC Objection 08/10/95

Agency Revised Rule

Obj. Removed 09/21/95

21 NCAC 32N .0002 - Continuances

RRC Objection 08/10/95

Agency Responded - Agency Will Not Revise Rule

Obj. Cont'd 09/21/95

Board of Pharmacy

21 NCAC 46 .2601 - Dispensing and Delivery

RRC Objection 08/10/95

Agency Revised Rule

Obj. Cont'd 08/10/95

Agency Revised Rule

Obj. Removed 09/21/95

Board of Physical Therapy Examiners

21 NCAC 48C .0103 - Prohibited Practice

Rule Withdrawn by Agency

09/21/95

21 NCAC 48E .0110 - Foreign-Trained Physical Therapists

RRC Objection 09/21/95

Agency Revised Rule

Obj. Removed 09/21/95

21 NCAC 48G .0514 - Continuances

RRC Objection 09/21/95

Agency Revised Rule

Obj. Removed 09/21/95

21 NCAC 48H .0703 - Hearings

RRC Objection 09/21/95

Agency Revised Rule

Obj. Removed 09/21/95

Board of Practicing Psychologists

21 NCAC 54 .1702 - Foreign Degree Application Policy

RRC Objection 09/21/95

Agency Revised Rule

Obj. Removed 09/21/95

PUBLIC EDUCATION*Elementary and Secondary Education*

16 NCAC 6D .0106 - Limited English Proficiency Programs
 Rule Withdrawn by Agency

10/18/95

SECRETARY OF STATE*Securities Division*

18 NCAC 6 .1209 - Nonprofit Securities
 Agency Revised Rule
 Rule Returned to Agency

RRC Objection 08/10/95
 Obj. Cont'd 08/10/95
 09/21/95

18 NCAC 6 .1314 - Escrow Agreements
 Rule Returned to Agency

RRC Objection 08/10/95
 09/21/95

18 NCAC 6 .1401 - Application for Registration of Dealers
 Agency Revised Rule
 Rule Returned to Agency

RRC Objection 08/10/95
 Obj. Cont'd 08/10/95
 09/21/95

18 NCAC 6 .1702 - Application for Investment Adviser Registration
 Agency Revised Rule
 Rule Returned to Agency

RRC Objection 08/10/95
 Obj. Cont'd 08/10/95
 09/21/95

STATE PERSONNEL*Office of State Personnel*

25 NCAC 1E .1408 - Certification
 Agency Revised Rule

RRC Objection 09/21/95
 Obj. Removed 09/21/95

25 NCAC 1J .0615 - Special Provisions
 Agency Revised Rule

RRC Objection 09/21/95
 Obj. Removed 09/21/95

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
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| <i>Division of Purchase and Contract</i> | | | | |
| Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract | 94 DOA 0803 | Nesnow | 03/06/95 | |
| CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al. | 95 DOA 0194 | Phipps | 06/13/95 | |
| <i>State Construction Office</i> | | | | |
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| Holland Group, Inc. v. Dept. of Administration, St. Construction Office | 94 DOA 1565 | Nesnow | 06/01/95 | 10:07 NCR 619 |
| ALCOHOLIC BEVERAGE CONTROL COMMISSION | | | | |
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| Albert Stanley Tomanec v. Alcoholic Beverage Control Commission | 94 ABC 1168 | Becton | 03/07/95 | |
| Robert Johnson v. Alcoholic Beverage Control Commission | 94 ABC 1661 | West | 05/01/95 | |
| Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission | 94 ABC 1682 | Chess | 05/03/95 | |
| Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc. | 94 ABC 1694 | Mann | 03/29/95 | |
| John H. Robinson v. Alcoholic Beverage Control Commission | 94 ABC 1727 | Morrison | 05/18/95 | |
| Clara and Carson Young v. Alcoholic Beverage Control Commission | 94 ABC 1729 | Chess | 05/11/95 | |
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| Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission | 94 ABC 1784 | Mann | 04/19/95 | |
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| Taleb Ahed Rahman v. Alcoholic Beverage Control Commission | 95 ABC 0323 | Phipps | 08/02/95 | |
| Sherrill Douglas Langston v. Alcoholic Beverage Control Commission | 95 ABC 0415 | Nesnow | 08/01/95 | 10:10 NCR 868 |
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| Imran Ali Hameerah v. Alcoholic Beverage Control Commission and City of Raleigh | 95 ABC 0477 | Phipps | 07/14/95 | |
| Ali Mohamed Ahmed v. Alcoholic Beverage Control Commission | 95 ABC 0487 | Gray | 10/03/95 | |
| Alcoholic Beverage Control Commission v. Vladimir Walter Kozlik Jr. | 95 ABC 0518*12 | Mann | 08/02/95 | 10:11 NCR 960 |
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| <i>Crime Victims Compensation Commission</i> | | | | |
| John Pavlikianidis v. Victims Compensation Commission | 94 CPS 0237 | Morrison | 03/21/95 | 10:02 NCR 176 |
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| Phyllis H. Steinmetz v. Crime Victims Compensation Commission | 94 CPS 0542 | West | 05/16/95 | |
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| Wayne L. Utley v. Crime Victims Compensation Commission | 94 CPS 1180 | Becton | 03/07/95 | |
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| Kristine S. Ray v. Crime Victims Compensation Commission | 94 CPS 1673 | Chess | 04/20/95 | |
| Shirley Moody Myers v. Crime Victims Compensation Commission | 94 CPS 1674 | Chess | 04/20/95 | |
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| Danny Ray Bell v. Crime Victims Compensation Commission | 95 CPS 0737 | Reilly | 09/11/95 | |
| Margie Lunsford v. Crime Victims Compensation Commission | 95 CPS 0779 | Becton | 09/19/95 | |
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| Diane Rawls v. North Carolina Board of Electrolysis Examiners | 95 BEE 0173 | West | 08/03/95 |
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

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| Environment, Health, & Natural Resources v. Royal James Cafe | 94 EHR 1756 | Becton | 06/30/95 | 10:08 NCR 696 |
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| Shugart Enterprises, Inc. | | | | |
| Browning-Ferris Ind. of S. Atlantic, Inc. and Sampson Cty. Disposal, Inc. | 95 EHR 0506 | West | 06/13/95 | |
| v. Dept. of Environment, Health, and Natural Resources, | | | | |
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| William C. Young v. Coastal Resources Commission | 95 EHR 0009 | Chess | 06/13/95 | |
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| EEE-ZZZ Lay Drain Compnay, Inc. v. On-Site Wastewater Section, Division of Environmental Health | 94 EHR 0745 | Chess | 04/24/95 | |
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| Empire Power Co. and George Clark v. EHNHR, Div. of Env. Mgmt. and | 92 EHR 0021* ¹ | Gray | 04/03/95 | |
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| <i>Hyde County Health Department</i> | | | | |
| Fritzner Henry v. Hyde County Health Department | 94 EHR 0924 | Gray | 03/09/95 | |
| <i>Macon County Health Department</i> | | | | |
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| <i>Marine Fisheries</i> | | | | |
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| Sameer Mohammed Dari v. EHNHR, Maternal & Child Health, Nutn Svcs. | 95 EHR 0853 | Gray | 10/10/95 | |
| Goldston Grocery, Larry Mis v. EHNHR, Div. of Maternal & Child Health | 95 EHR 0869 | Becton | 09/13/95 | |
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| <i>Division of Solid Waste Management</i> | | | | |
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* Consolidated cases.

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| HUMAN RESOURCES | | | | |
| Veronica Spearman, John P. Spearman v. Dept. of Human Resources | 95 DHR 0216 | Reilly | 06/02/95 | |
| Sandra Jean Taylor v. Department of Human Resources | 95 DHR 0366 | Reilly | 07/19/95 | |
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| <i>Division of Child Development</i> | | | | |
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| Samuel Simmons & Wife, Alphia Mack Simmons v. Human Resources | 94 DHR 1617 | Gray | 09/13/95 | 10:13 NCR 1205 |
| Willie & Pamela Sturgess v. DHR, Division of Child Development | 94 DHR 1631 | Reilly | 07/10/95 | |
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| Theresa B. Thomas v. DHR, Division of Child Development | 95 DHR 0268 | Morrison | 07/14/95 | |
| Ellen H. Sams v. DHR, Division of Child Development | 95 DHR 0293 | Phipps | 08/08/95 | |
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| Brenda I. McAllister v. DHR, Division of Facility Services | 95 DHR 0149 | West | 09/11/95 | |
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| <i>Certificate of Need Section</i> | | | | |
| The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care | 94 DHR 0197*2 | Reilly | 04/05/95 | |
| The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care | 94 DHR 0198*2 | Reilly | 04/05/95 | |
| Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd. Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR, Division of Facility Services, Certificate of Need Section and Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/ Wallace, Inc. | 94 DHR 0403 | Chess | 12/14/94 | |
| Gordon G. Koltis, M.D., Carolina Radiation & Cancer Treatment Center, P.A., and Carolina Radiation Medicine, P.A. v. DHR, Div. of Facility Services, Certificate of Need Section, and Pitt County Memorial Hospital, Inc. | 94 DHR 1820 | Chess | 09/25/95 | |

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| Charles M. Erwin v. DHR, Facility Svcs, Off. of Emgcy. Medical Svcs. | 92 DHR 1697 | Chess | 05/16/95 | 10:06 NCR 409 |
| <i>Division of Medical Facilities Licensure Section</i> | | | | |
| Shelia Marie Hall v. DHR, Div/Facility Svcs., Med. Facilities Lic. Sec. | 95 DHR 0307 | Nesnow | 08/11/95 | |
| Joe Junior Bailey v. DHR, Div/Facility Svcs., Med. Facilities Lic. Sec. | 95 DHR 0322 | Becton | 09/13/95 | |
| Evangeline of King, Inc. v. DHR, Div/Fac Svcs, Med. Facilities Lic. Sec. | 95 DHR 0413 | Reilly | 08/14/95 | |
| Nicole Murphy v. DHR, Div/Facility Svcs, Med. Facilities Lic. Sec. | 95 DHR 0863 | Becton | 10/20/95 | |
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| D.A., by and through his agent and personal representative, Hank Neal v. DHR, Division of Medical Assistance | 93 DHR 1737 | Reilly | 05/22/95 | |
| Stephen K., & Christopher & Katina Komorek v. DHR, Med Assistance | 94 DHR 1170 | Reilly | 10/18/95 | |
| <i>Division of Social Services</i> | | | | |
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| Roger T. Benoy v. Department of Human Resources | 94 CSE 1579 | Reilly | 03/03/95 | |
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| Charles Scott Wilhoit v. Department of Human Resources | 94 CSE 1594 | Reilly | 04/21/95 | |
| Mickey Bridgett v. Department of Human Resources | 94 CSE 1595 | West | 05/08/95 | |
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| David Lester Gordon v. Department of Human Resources | 94 CSE 1609 | Mann | 03/13/95 | |
| Larry James Walker, Jr. v. Department of Human Resources | 94 CSE 1610 | Chess | 06/01/95 | |
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| Lewis M. Scarborough v. Department of Human Resources | 94 CSE 1725 | West | 05/25/95 | |
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| Keith Matthews v. Department of Human Resources | 95 CSE 0205 | Chess | 07/19/95 | |
| Ernest N. Pruitt, Jr. v. Department of Human Resources | 95 CSE 0206 | Phipps | 07/21/95 | |
| Troy Cage v. Department of Human Resources | 95 CSE 0207 | Phipps | 07/26/95 | |
| Clyde R. Gaither v. Department of Human Resources | 95 CSE 0208 | Phipps | 07/31/95 | |
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| Raul A. Dinzey v. Department of Human Resources | 95 CSE 0344 | Mann | 08/03/95 | |

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| David Dean Davis v. Department of Human Resources | 95 CSE 0350 | Phipps | 07/26/95 | |
| Frank McGirt v. Department of Human Resources | 95 CSE 0351 | Gray | 08/07/95 | |
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| Clarence O. Hilliard v. Department of Human Resources | 95 CSE 0371 | Reilly | 05/25/95 | |
| Larry James McGirt v. Department of Human Resources | 95 CSE 0389 | Nesnow | 08/10/95 | |
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| John K. Bostic v. Department of Human Resources | 95 CSE 0493 | Nesnow | 08/02/95 | |
| Eva T. Wilson v. Department of Human Resources | 95 CSE 0520 | Reilly | 07/21/95 | |
| Robert Lee Smith, Jr. v. Department of Human Resources | 95 CSE 0528 | West | 08/25/95 | |
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| Robert Lee Bullock v. Department of Human Resources | 95 CSE 0559 | Phipps | 07/31/95 | |
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| James M. Melvin v. Department of Human Resources | 95 CSE 0719 | Phipps | 10/10/95 | |
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| Kirk Shannon Baker v. Department of Human Resources | 95 CSE 0734 | Morrison | 10/06/95 | |
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| Willie M. Herring v. Department of Human Resources | 95 CSE 0913 | Gray | 09/25/95 | |

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| Lisa J. Hill v. DHR, Div. of Social Svcs., Child Support Enf. Section | 95 DCS 0239 | Phipps | 05/02/95 | |
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| Mr. and Mrs. William Jefferson v. Hoke Cty Soc Svcs, Linda Cromartie | 95 DHR 0857 | Gray | 08/17/95 | |
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| Crystean Fields v. Rockingham County DSS | 95 DHR 0316 | Reilly | 06/01/95 | |
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| Billy Gene Campbell v. Department of Insurance | 95 INS 0143 | Reilly | 04/20/95 | |
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| Reginald Keith Goffington v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0028 | Becton | 06/08/95 | |
| Nervin Joseph DeDeaux v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0029 | Reilly | 05/16/95 | |
| Tony Lamont Blackmon v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0043 | Reilly | 06/02/95 | |
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| Alexander Douglas Jones v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0101 | Morrison | 06/13/95 | 10:07 NCR 627 |
| Marilyn Jean Britt v. Sheriff's Ed. & Training Stds. Comm. | 95 DOJ 0172 | Gray | 08/03/95 | |
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| Richard Dan Wuchte v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0401 | Nesnow | 06/07/95 | |
| Henry Roger Judd v. Sheriff's Ed. & Training Stds. Comm. | 95 DOJ 0431 | Nesnow | 08/02/95 | |
| Daryl Tyrone Beard v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0566 | Gray | 10/11/95 | |
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| George H. Powell Jr. v. Criminal Justice Ed. & Training Stds. Comm. | 95 DOJ 0784 | Phipps | 09/08/95 | |
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| Donnell E. Morrow, Jr. v. Private Protective Services Board | 94 DOJ 1823 | Reilly | 03/09/95 | |
| Private Protective Services Board v. James C. Purvis | 95 DOJ 0018 | Chess | 05/15/95 | |
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| R.J. Scott, Pres. Pirate Enterprises, Inc. v. Labor, Wage & Hour Div. | 94 DOL 1524 | West | 03/23/95 | |
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| Glenn II, on behalf of Glenn II, and Glenn II, Individually v. Charlotte-Mecklenburg County Schools | 93 EDC 0549 | Chess | 03/16/95 | |
| Donna Marie Snyder v. Department of Public Instruction | 93 EDC 0731 | Chess | 10/11/95 | |
| S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education | 93 EDC 0742 | Phipps | 05/30/95 | |
| William Hewett v. State Board of Education | 94 EDC 0533 | Gray | 03/31/95 | 10:02 NCR 179 |
| James Midgett v. State Board of Education | 94 EDC 1401 | Reilly | 05/02/95 | |
| Deborah R. Crouse v. State Board of Education | 95 EDC 0003 | Chess | 04/10/95 | |
| Haydn Stewart Hasty v. State Board of Education | 95 EDC 0027 | Reilly | 10/09/95 | 10:15 NCR 1632 |
| Bobby G. Little v. Department of Public Instruction | 95 EDC 0168 | Phipps | 03/20/95 | |
| Tonya Marie Snipes and Robert Leon Snipes v. Orange County Schools | 95 EDC 0225 | Mann | 05/15/95 | |
| Vance County Schools v. Haywood Yarbrough | 95 EDC 0235 | Mann | 08/04/95 | |
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CONTESTED CASE DECISIONS

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| Nancy C. Walker v. Department of Correction | 94 OSP 1206 | Gray | 08/18/95 | |
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| Odell Davis v. Department of Correction | 95 OSP 0244 | Gray | 09/21/95 | |
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| Dennis Harrell v. Department of Correction | 95 OSP 0440 | Phipps | 09/05/95 | 10:13 NCR 1209 |
| William E. Norwood, Jr. v. Department of Correction | 95 OSP 0500 | Gray | 08/16/95 | |
| Shelby Gorham-Teel v. Department of Correction | 95 OSP 0536 | Reilly | 10/23/95 | |
| Larry Riddle v. Department of Correction | 95 OSP 0570 | West | 10/18/95 | |
| Eric Little v. Department of Correction, Morrison Yout Institution | 95 OSP 0658 | Phipps | 10/18/95 | |
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| Paul E. Hunter v. Dorothea Dix Hospital | 95 OSP 0504 | Gray | 07/12/95 | |
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| Laurie A. Gerhard v. Durham County Health Department | 95 OSP 0220 | Phipps | 08/17/95 | 10:12 NCR 1043 |
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| Michael Howell v. Forsyth Stokes Mental Health Center | 94 OSP 0499 | Chess | 03/24/95 | |
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| Rebecca Johnson v. Human Resources, Special Care Center | 95 OSP 0138 | West | 03/31/95 | |
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| <i>Richmond County Department of Social Services</i> | | | | |
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| Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir. | 94 OSP 1032*8 | Nesnow | 06/12/95 | |
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| David L. Bauer v. North Carolina State University | 95 OSP 0044 | Morrison | 04/25/95 | |
| Billy Ray Kelly v. NCSU Physical Plant | 95 OSP 0130 | West | 03/22/95 | |
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| Jerry B. Potter, Sr. v. UNC Hospitals at Chapel Hill | 95 UNC 0502 | Gray | 09/12/95 | |

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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Note: Title 21 contains the chapters of the various occupational licensing boards.

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| | .0505 | 10:16 NCR 1698 | | | 02/01/96 | |
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| 09F | .0101 - .0107 | 10:16 NCR 1797 | | | 05/01/96 | |
| 10B | .0102 - .0103 | 10:09 NCR 723 | | | 01/01/96 | |
| | .0105 | 10:09 NCR 723 | | | 01/01/96 | |
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| | 10:03 NCR 197 | 01/01/96 | | | | Notice on Subject Matter |
| 06 | 10:16 NCR 1799 | 04/01/96 | | | | Notice on Subject Matter |
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| 15 | 10:16 NCR 1827 | 04/01/96 | | | | Notice on Subject Matter |
| 18 .0101 - .0110 | 10:14 NCR 1323 | 01/01/96 | | | | |
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| 21 NCAC 26 .0307 | 10:15 NCR 1583 | 02/01/96 | | | | |
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| | 10:04 NCR 272 | | | | | Rules Filed 04/95 |
| | 10:06 NCR 392 | | | | | Rules Filed 05/95 |
| | 10:09 NCR 783 | | | | | Rules Filed 06/95 |
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| | 10:12 NCR 1017 | | | | | Rules Filed 08/95 |
| | 10:15 NCR 1585 | | | | | Rules Filed 09/95 |
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| .0401 - .0405 | 10:10 NCR 839 | 12/01/95 | | | | |
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| 21 NCAC 37 .0101 | 10:04 NCR 262 | 08/01/95 | | | 08/01/95 | |
| .0302 | 10:03 NCR 206 | 08/01/95 | | | N/A | Agency withdrew Rule |
| .0404 | 10:03 NCR 206 | 08/01/95 | | | N/A | Agency withdrew Rule |
| .0502 | 10:03 NCR 206 | 08/01/95 | | | 08/01/95 | |
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| .0904 | 10:04 NCR 262 | 08/01/95 | | | N/A | Agency withdrew Rule |
| .0912 | 10:03 NCR 206 | 08/01/95 | | | 08/01/95 | |
| .0914 | 10:03 NCR 206 | 08/01/95 | | | N/A | Agency withdrew Rule |
| 37A .0101 | 10:16 NCR 2069 | 04/01/96 | | | | |
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| 21 NCAC 45 .0101 | 10:16 NCR 2082 | 03/01/96 | | | | |
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| 48B .0002 | 10:16 NCR 2107 | 02/01/96 | | | | |
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| 48E .0101 | 10:16 NCR 2107 | 02/01/96 | | | | |
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| | | | | | N/A | Agency withdrew Rule |
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| 17 NCAC 09G | .0102 | 10:16 NCR 2006 | | | 11/30/96 | |
| | .0104 - .0105 | 10:16 NCR 2006 | | | 11/30/96 | |

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| .0601 - .0602 | 10:16 NCR 2006 | 01/01/96 | | | | |
| 09L .0301 - .0302 | 10:16 NCR 2006 | 01/01/96 | | | | |
| .0401 - .0404 | 10:16 NCR 2006 | 01/01/96 | | | | |
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| .0401 - .0402 | 10:15 NCR 1567 | 02/01/96 | | | | |
| .0501 - .0504 | 10:15 NCR 1567 | 02/01/96 | | | | |
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| 07 .0302 | 10:15 NCR 1578 | 02/01/96 | | | | |
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| 21 NCAC 63 .0306 | 10:13 NCR 1185 | 01/01/96 | | | | |
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| 25 NCAC 01B .0201 | 10:16 NCR 2155 | 02/01/96 | | | | |
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| 01E .0304 - .0305 | 10:12 NCR 986 | 12/01/95 | | | | |
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| 21 NCAC 65 .0004 | 10:16 NCR 2140 | 02/01/96 | | | | |
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| 04A .0004 | 10:10 NCR 829 | 12/01/95 | | | | |
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VETERINARY MEDICAL BOARD

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| 21 NCAC 66 .0101 | 10:16 NCR 2143 | 04/01/96 |
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| .0301 | 10:16 NCR 2143 | 04/01/96 |
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| .0703 | 10:16 NCR 2143 | 04/01/96 |

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

| DESCRIPTION | CODE | ONE-TIME PURCHASE PRICE | ANNUAL SUBSCRIPTION PRICE |
|---|------------------|-------------------------------|---------------------------------|
| Title 1 - Dept. of Administration - Full Title | 201 00 00 | \$63.00 | \$90.00 |
| Division of Purchase & Contract | 201 10 05 | \$21.00 | \$30.00 |
| Federal Block Grant Funds | 201 10 33 | \$17.50 | \$25.00 |
| Title 2 - Dept. of Agriculture - Full Title | 202 00 00 | \$98.00 | \$140.00 |
| Food & Drug Protection Division | 202 15 09 | \$28.00 | \$40.00 |
| Structural Pest Control Committee | 202 15 34 | \$21.00 | \$30.00 |
| Agricultural Markets | 202 15 43 | \$21.00 | \$30.00 |
| Plant Industry | 202 15 48 | \$21.00 | \$30.00 |
| Animal Industry | 202 15 52 | \$21.00 | \$30.00 |
| Title 3 - Dept. of State Auditor - Full Title | 203 00 00 | \$7.00 | \$10.00 |
| Title 4 - Dept. of Commerce - Full Title | 204 00 00 | \$87.50 | \$125.00 |
| Alcoholic Beverage Control Commission | 204 15 02 | \$12.00 | \$40.00 |
| Banking Commission | 204 15 03 | \$24.50 | \$35.00 |
| Credit Union Division | 204 15 06 | \$14.00 | \$20.00 |
| Savings & Loan Division | 204 15 09 | \$14.00 | \$20.00 |
| Industrial Commission/Workers Compensation | 204 15 10 | \$14.00 | \$20.00 |
| Savings Institutions Division | 204 15 16 | \$24.50 | \$35.00 |
| Title 5 - Dept. of Corrections - Full Title | 205 00 00 | \$56.00 | \$80.00 |
| Division of Prisons | 205 15 02 | \$24.50 | \$35.00 |
| Title 6 - Council of State - Full Title | 206 00 00 | \$21.00 | \$30.00 |
| Title 7 - Dept. of Cultural Resources - Full Title | 207 00 00 | \$21.00 | \$30.00 |
| Title 8 - State Board of Elections - Full Title | 208 00 00 | \$7.00 | \$10.00 |
| Title 9 - Offices of the Governor & Lt. Governor - Full Title | 209 00 00 | \$31.50 | \$45.00 |
| Title 10 - Dept. of Human Resources - Full Title | 210 00 00 | \$346.50 | \$495.00 |
| Licensing of Health Facilities | 210 20 10 | \$45.50 | \$65.00 |
| Detention Facilities | 210 20 20 | \$31.50 | \$45.00 |
| Mental Health & Rehabilitation Services | 210 20 30 | \$77.00 | \$110.00 |
| Social Services | 210 20 40 | \$119.00 | \$170.00 |
| Children Services/Day Care | 210 20 41 | \$31.50 | \$45.00 |
| Services for the Aging | 210 20 42 | \$31.50 | \$45.00 |
| Services for the Blind | 210 20 43 | \$28.00 | \$40.00 |
| Services for the Deaf & Hard of Hearing | 210 20 44 | \$17.50 | \$25.00 |
| Employment Opportunities | 210 20 45 | \$35.00 | \$50.00 |
| Title 11 - Dept. of Insurance - Full Title | 211 00 00 | \$63.00 | \$90.00 |
| Insurance | 211 10 01 | \$56.00 | \$80.00 |
| Consumer Services | 211 10 04 | \$24.50 | \$35.00 |
| Fire & Rescue Services | 211 10 05 | \$17.50 | \$25.00 |
| Agent Services | 211 10 06 | \$28.00 | \$40.00 |
| Engineering & Building Codes | 211 10 08 | \$21.00 | \$30.00 |
| Title 12 - Dept. of Justice - Full Title | 212 00 00 | \$63.00 | \$90.00 |
| Private Protective Services | 212 10 07 | \$21.00 | \$30.00 |
| Police & Sheriff's Education & Training Standards | 212 10 09 | \$31.50 | \$45.00 |
| NC Alarm Systems Licensing Board | 212 10 11 | \$17.50 | \$25.00 |
| Title 13 - Dept. of Labor - Full Title | 213 00 00 | \$77.00 | \$110.00 |
| Mine & Quarry Safety | 213 15 06 | \$14.00 | \$20.00 |
| General Safety/OSHA | 213 20 00 | \$31.50 | \$45.00 |
| Wage & Hour Rules | 213 15 12 | \$14.00 | \$20.00 |
| Boiler & Pressure Vessel Safety | 213 15 13 | \$14.00 | \$20.00 |
| Apprenticeship & Training | 213 15 14 | \$14.00 | \$20.00 |
| Elevator & Amusement Device Safety | 213 15 15 | \$14.00 | \$20.00 |
| Title 14A - Dept. of Crime Control & Public Safety - Full Title | 214 00 00 | \$31.50 | \$45.00 |
| Alcohol Law Enforcement | 214 00 08 | \$17.50 | \$25.00 |
| Victims Compensation Fund | 214 00 11 | \$14.00 | \$20.00 |
| Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title | 215 00 00 | \$276.50 | \$395.00 |
| Environmental Management | 215 15 00 | \$115.50 | \$165.00 |
| Air Quality | 215 15 10 | \$49.00 | \$70.00 |
| Water Quality | 215 15 20 | \$49.00 | \$70.00 |
| Land & Waste Management | 215 15 30 | \$56.00 | \$80.00 |
| Solid Waste Management | 215 15 31 | \$35.00 | \$50.00 |
| Underground Storage Tanks | 215 15 32 | \$17.50 | \$25.00 |

| DESCRIPTION | CODE | ONE-TIME PURCHASE PRICE | ANNUAL SUBSCRIPTION PRICE |
|--|------------------|-------------------------------|---------------------------------|
| Coastal Management | 215 15 40 | \$31.50 | \$45.00 |
| Environmental Health | 215 25 00 | \$105.00 | \$150.00 |
| Radiation/Nuclear Waste | 215 25 10 | \$42.00 | \$60.00 |
| Sanitation | 215 25 20 | \$35.00 | \$50.00 |
| Public Health | 215 25 30 | \$59.50 | \$85.00 |
| Intoxilizer & Breathalyzer | 215 25 31 | \$17.50 | \$25.00 |
| Title 16 - Dept. of Public Instruction - Full Title | 216 00 00 | \$21.00 | \$30.00 |
| Elementary & Secondary Education | 216 10 06 | \$21.00 | \$30.00 |
| Title 17 - Dept. of Revenue - Full Title | 217 00 00 | \$91.00 | \$130.00 |
| Taxes on Individuals | 217 15 10 | \$31.50 | \$45.00 |
| Taxes on Business | 217 15 20 | \$56.00 | \$80.00 |
| Sales & Use Tax Division | 217 15 27 | \$31.50 | \$45.00 |
| Motor Fuels Tax Division | 217 15 29 | \$21.00 | \$30.00 |
| Title 18 - Secretary of State - Full Title | 218 00 00 | \$21.00 | \$30.00 |
| Securities Division | 218 10 06 | \$21.00 | \$30.00 |
| Title 19A - Dept. of Transportation - Full Title | 219 00 00 | \$63.00 | \$90.00 |
| Division of Highways | 219 10 02 | \$28.00 | \$40.00 |
| Division of Motor Vehicles | 219 10 03 | \$35.00 | \$50.00 |
| Title 20 - Dept. of the State Treasurer - Full Title | 220 00 00 | \$31.50 | \$45.00 |
| Title 21 - Occupational Licensing Boards - Full Title | 221 00 00 | \$143.50 | \$205.00 |
| Title 22 - Administrative Procedures Act - Repealed | 222 00 00 | \$0.00 | \$0.00 |
| Title 23 - Dept. of Community Colleges - Full Title | 223 00 00 | \$7.00 | \$10.00 |
| Title 24 - Independent Agencies - Full Title | 224 00 00 | \$7.00 | \$10.00 |
| Title 25 - Office of State Personnel - Full Title | 225 00 00 | \$42.00 | \$60.00 |
| Title 26 - Office of Administrative Hearings - Full Title | 226 00 00 | \$7.00 | \$10.00 |
| Title 27 - North Carolina State Bar - Full Title | 227 00 00 | \$42.00 | \$60.00 |
| North Carolina Administrative Code - Full Code (Add \$85.00 Shipping and Handling) | 299 99 98 | \$375.00 | \$750.00 |
| CD-ROM North Carolina Administrative Code | 266 00 00 | - - | \$750.00 |
| CD-ROM North Carolina Administrative Code (When purchased with the Full Code in Print) | 266 50 00 | - - | \$250.00 |
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